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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, ORIGINAL.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

Vol. I.

(PAGES 1 TO 1048, INCLUSIVE.)

BILL FILED OCTOBER 27, 1902.

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STATE OF LOUISIANA, COMPLAINANT,

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1 At the Capitol of the United States in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the thirteenth day of the same month) in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh, the Supreme Court of the United States met agreeably to law.

And afterwards, towit, on the 20th day of October A. D. 1902, the following entry appears of record, viz :

2 Supreme Court of the United States.

THE STATE OF LOUISIANA,	}	No. —, Original, October Term, 1902.
Complainant,		
vs.		
THE STATE OF MISSISSIPPI.		

Mr. Walter Guion, of counsel for the complainant, submitted to the consideration of the court a motion for leave to file a bill of complaint herein.

October 20th, 1902.

Which said motion is in the words and figures following, viz.

3 Supreme Court of the United States, — Term, 1902.

STATE OF LOUISIANA	}	No. —.
versus		
STATE OF MISSISSIPPI.		

Motion and Brief in Support of Motion to File Bill of Complaint.

Walter Guion, attorney general of Louisiana.

John Dymond, Jr., Albert Estopinal, Jr., of counsel.

4 Supreme Court of the United States.

STATE OF LOUISIANA	}	No. —.
versus		
STATE OF MISSISSIPPI.		

And now comes the State of Louisiana, through Walter Guion, its attorney general, and Messrs. John Dymond, Jr., and Albert Estopinal, Jr., of counsel, and moves this honorable court for permission to file in this court its bill of complaint against the State of Mississippi, and for process to answer.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

Supreme Court of the United States.

STATE OF LOUISIANA	} No. —.
<i>versus</i>	
STATE OF MISSISSIPPI.	

Brief on the Part of the State of Louisiana in Support of Its Motion to File Its Bill of Complaint.

May it please your honors:

This proceeding is an action of boundary on the part of the State of Louisiana brought against its adjoining sister State, Mississippi, and relief is sought through the original jurisdiction of this honorable court, as provided in section 2 of article three of the Constitution of the United States of America.

We have set forth in our bill of complaint the detail of the dispute between the two States. It is as to their respective boundaries as created, described and established by the acts of Congress of the United States forming the two States, and your honors are asked to interpret the meaning of these acts of Congress and to apply your resulting conclusions in establishing a boundary line in the waters between certain parts of the two States where the disagreement as to their respective rights exists.

The proceeding is not a novel one, as in the course of the history of our Union many similar cases have been heard and decided by your honors.

In the case of *The State of New Jersey vs. The State of New York*, 5 Peters, 284, the question was first fully considered and it was there held, that the Supreme Court of the United States had original jurisdiction to settle boundaries between States. This decision on this point was affirmed in the cases of *The State of Rhode Island vs. The State of Massachusetts*, 12 Peters, 657; and has been uniformly followed in the cases of *The State of Missouri vs. The State of Iowa*, 7 Howard, 660; *The State of Florida vs. The State of Georgia*, 17 Howard, 478; *The Commonwealth of Virginia vs. The State of West Virginia*, 11 Wallace, p. 39; *The State of Missouri vs. The State of Kentucky*, 11 Wallace, p. 395; *The State of Indiana vs. The State of Kentucky*, 136 U. S., p. 479; *The State of Virginia vs. The State of Tennessee*, 148 U. S., p. 503.

Your orator therefore respectfully prays that its motion for leave to file its bill of complaint be granted, and that process to answer be issued and all other necessary orders be granted.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

7 (Endorsed :) Supreme Court U. S., October term, 1902.
No. 12, original. State of Louisiana, complainant, *vs.* State
of Mississippi. Motion for leave to file bill of complaint. Filed
October 27, 1902.

8 And afterwards, to wit, on the 27th day of October, A. D.
1902, the following entry appears of record, viz :

9 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	} No. 12, Original, October Term, 1902.
<i>vs.</i> THE STATE OF MISSISSIPPI.	

On consideration of the motion for leave to file a bill of com-
plaint herein,

It is now here ordered by the court that said motion be, and the
same is hereby granted, and that a subpoena returnable on Monday,
January 12, 1903, be issued and served herein.

October 27th, 1902.

10 [Endorsed :] Supreme Court of the United States. October
term, 1902. Term No. 12, original. Order. Filed Oct. 27,
1902.

11 And on the same day to wit, the 27th day of October,
A. D. 1902, the bill of complaint was filed in the words and
figures following, to wit :

12 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA	} No. 12, Orig'l.
<i>versus</i> STATE OF MISSISSIPPI.	

Bill of Complaint.

Walter Guion, attorney general of Louisiana.

John Dymond, Jr., Albert Estopinal, Jr., of counsel.

13 Supreme Court of the United States, — Term, 1902.

STATE OF LOUISIANA	} No. —.
<i>versus</i> STATE OF MISSISSIPPI.	

Bill of Complaint.

To the honorable the Chief Justice and the associate justices of
the Supreme Court of the United States :

The State of Louisiana, one of the United States of America, by
William W. Heard, governor, and upon the information of Walter

Guion, attorney general, brings this, her bill of complaint, against The State of Mississippi, one of the United States of America, and against Andrew H. Longino, a citizen of the State of Mississippi, in his capacity as governor of the State of Mississippi, and Monroe McClurg, attorney general of the State of Mississippi, and thereupon your orator complains and says :—

1st. That the State of Louisiana was admitted into the Union of the United States of America by the act of Congress, found in 14 chapter 50 of the United States Statutes at Large, volume 2, page 701, approved April 6th, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said act, were described as follows :—

“Whereas, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803, between the United States and France contained within the following limits, that is to say : Beginning at the mouth of the River Sabine, thence by a line drawn along the middle of said river, including all islands to the 32d degree of latitude ; thence due north to the northernmost part of the 33d degree of north latitude ; thence along the said parallel of latitude to the Mississippi river ; thence down the said river to the River Iberville, and from *thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico ; thence bounded by said gulf to the place of beginning, including all islands within three leagues of the coast,*” etc. (Italics ours.)

2nd. That according to the foregoing description, the eastern boundary of the State of Louisiana was formed by the Mississippi river, beginning at the northeast corner of said State and extending south to the junction of the said river, with the River Iberville (now known as Bayou Manchac) and thence extending eastwardly through the lower end of the Amite river, through the middle of Lake Maurepas, Pass Manchac, and Lake Pontchartrain, and in order to reach the gulf of Mexico its only course was through the Rigolets, into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, following said channel, north of Half Moon island, through Mississippi sound to the north of Isle à Pitre, through the Cat Island channel, southwest of Cat island, into the gulf of Mexico, which said eastern boundary of the State of Louisiana is more fully shown on diagram No. 1, made part of this bill ;

(Here follows diagram marked p. 14a.)

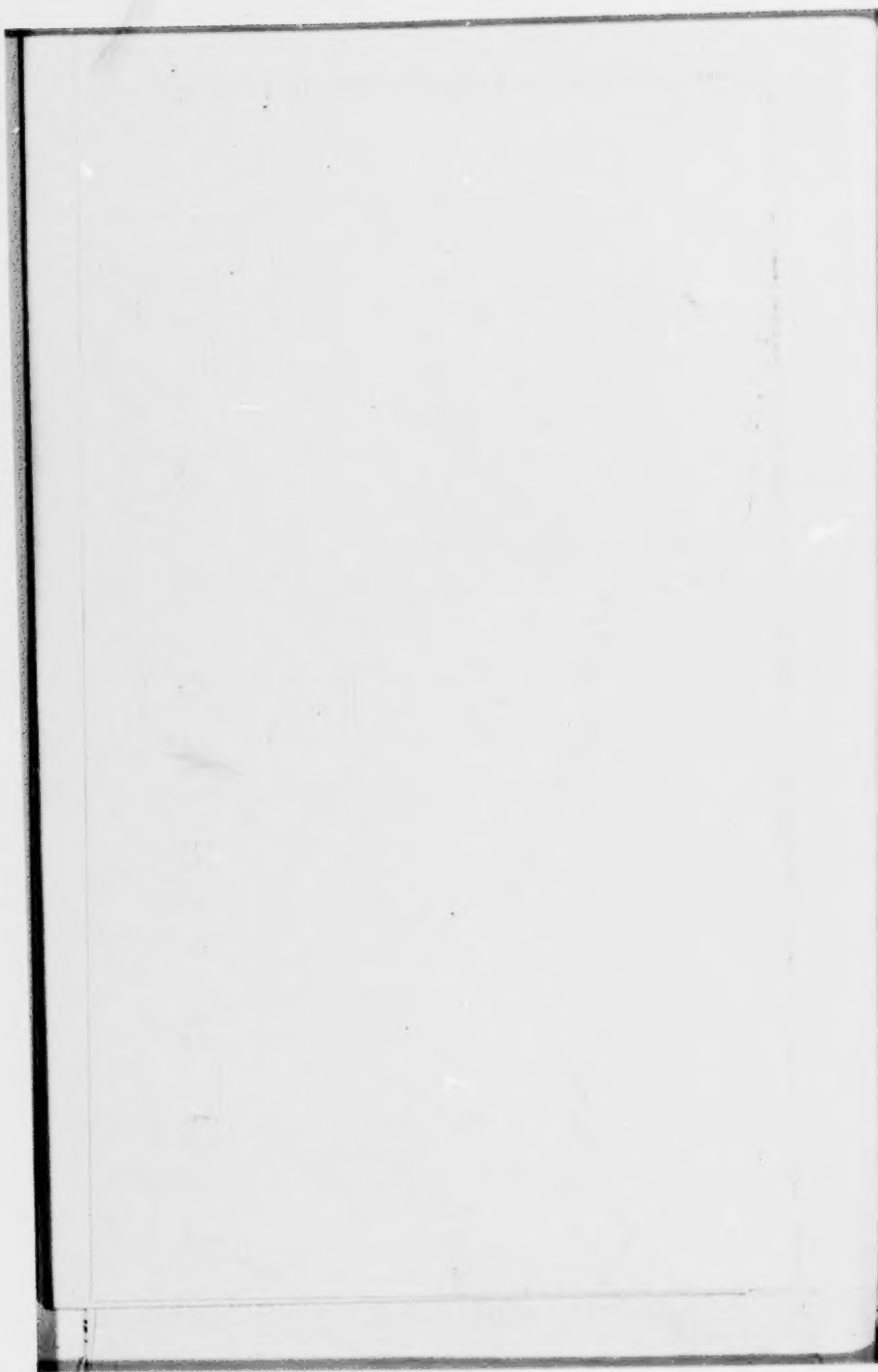
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No. 11, Orig. }
Louisiana } p. 14th
Mississippi }



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3rd. That by the act of Congress, found in the United States Statutes at Large, vol. 2, p. 708, chapter 57, approved April 14th, 1812, additional territory was added to the then existing
15 State of Louisiana, which additional territory was described in the following language:—

“Beginning at the junction of the River Iberville with the Mississippi river; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the eastern branch of the Pearl river to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana;”

4th. That the effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the Mississippi river as the original eastern boundary, as far south as the 31st degree of north latitude. The change then moved the eastern boundary eastward along the 31st degree of north latitude to the Pearl river, whence it then ran south down the said river, through its eastern branch, till it entered the northern corner of Lake Borgne, where the State's eastern boundary then joined and followed the boundary line originally fixed in the act of April 6th, 1812, and followed, as heretofore stated, the deep water channel through the upper corner of Lake Borgne, north of Half Moon island, eastward through the deep water channel along the Mississippi sound till it reached the Cat Island channel north of Isle à Pitre, and south west of Cat island, whence passing through Chandeleur sound, northeast of Chandeleur islands, it entered the gulf of Mexico, and ran south around the delta of the Mississippi river and then north and westward to the point where the Sabine river enters the gulf of Mexico, as will be more fully seen from the diagram No. 2, made part of this bill;

(Here follows diagram marked p. 15a.)

5th. That the territory lying adjacent to, and to the eastward of the State of Louisiana is the State of Mississippi, which latter State was admitted into the Union of the United States of America
 16 by the act of Congress, found in the United States Statutes at Large, volume 3, chapter 23, page 348, approved March 1st, 1817, whereby the inhabitants of the western part of the then Mississippi territory were authorized to form for themselves a State constitution and to be admitted into the Union, the boundaries of the then to be created State being described as follows:—

“Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same; thence along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the gulf of Mexico; *thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne*; thence up said river to the 31st degree of north latitude; thence west along said degree of latitude to the Mississippi river; thence up the same to the beginning;”

6th. That by the said act, Congress intended that the southern boundary line of the State of Mississippi, beginning at the point dividing it from the State of Alabama, should run westwardly till it joined the Louisiana eastern boundary line, and that in doing so, the said southern boundary would in effect start westward from a point eighteen miles south of the coast line, and include in its westwardly direction the western end of Petit Bois island, all of Horn island, Ship island and Cat island, and the smaller islands north of these, those islands being the ones contemplated in the act of Congress, as being within eighteen miles of the southern coast line of Mississippi, and that the said southern boundary of Mississippi, extending in its *westwardly* direction through the gulf of Mexico, would gradually approach the coast line, and meet the eastern boundary line of Louisiana, just as the said eastern boundary line of Louisiana
 17 immerses from the Cat Island channel into the gulf of Mexico, and thence follow and become the same as the Louisiana boundary line extending westwardly to the south of Cat island, through Mississippi sound to the north of Half Moon or Grand island to the *most southern junction of the east branch of Pearl river with Lake Borgne*, being identical with the Louisiana eastern boundary, and thence extending up the channel of Pearl river;

7th. That the islands included between the shore line and the southern boundary of the State of Mississippi are the islands heretofore described, viz: the western end of Petit Bois island, with all of Horn island, Ship island and Cat island, and the small islands north of them, those islands being large, and well known to Congress at the time of the passage of the act, all of which islands and the southern boundary of the State of Mississippi will more fully appear from the diagram No. 3, made a part of this bill;

(Here follows diagram marked p. 17a.)

No. 11. Ougl
Koriscane } p. 17^a
v.
Mississippi }



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8th. That the islands contemplated in the act of Congress of 1812, creating the State of Louisiana, and intended to be embraced within the State of Louisiana, as provided by the clause, "*Thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast,*" were all of the other islands, except those heretofore named as going to the State of Mississippi, as all other islands, and all other mainland, are south and west of the boundary line thus passing from Pearl river through the deep water channels in Lake Borgne, and Mississippi sound, through the deep water channel, southwest of Cat island to the eastward of the Chandeleur islands, and thence south, taking in the delta of the Mississippi river, and extending westward along the Gulf coast, including all islands along the coast, to the Sabine river, where the State of Louisiana is thence bounded on the westward by the State of Texas, all of which will more fully appear from diagram No. 2, heretofore referred to ;

9th. Now your orator avers that there has developed in recent years in the waters south of the State of Mississippi and east of the southern portion of the State of Louisiana a considerable growth of oysters, and an industry of large proportions, in the handling of the said bivalves, either in their fresh or in a canned condition, has resulted therefrom ;

10th. That the State of Mississippi has, by legislative enactments, regulated the oyster industry in the waters of said State, and *permits* the dredging of oysters on the natural oyster reefs in waters of the said State, as will more fully appear from the statutes of said State to which reference is made ;

11th. That the State of Louisiana has by legislative enactments regulated the oyster industry in the said State of Louisiana, and *prohibits* the dredging of oysters on the natural reefs in the waters of said State, as will more fully appear from the statutes of said State to which reference is made ;

12th. That the provisions of the laws of the said two States differ considerably in many other respects.

13th. That the existence and location of the natural oyster reefs in the waters of the parish of St. Bernard in the State of Louisiana which adjoins the State of Mississippi is shown by the map made from a reconnaissance by the United States Fish Commission steamer, "Fish Hawk," in February, 1898, as will more fully appear from diagram No. 4, now made part of this bill ;

(Here follows diagram marked p. 18a.)

14th. Now your orator avers that the boundary line dividing the two States in the waters thereof has been clearly defined by the acts of Congress creating the States of Louisiana and Mississippi, as will be seen from the diagram No. 5, made up from the boundary descriptions taken from the acts of Congress creating the said States of Louisiana and Mississippi, which diagram is also made part of this bill ;

(Here follows diagram marked p. 18b.)



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15th. That the said boundary line in the waters between said States has never been designated by buoys or marks of any kind by either State, nor designated in any manner, except by the United States

Government in so far as it has buoyed the *deep water channel*,
 19 extending from the mouth of the Pearl river through the upper corner of Lake Borgne north of Half Moon island, eastward to the Cat Island pass, north of Isle à Pitre, and southwest of Cat island, which buoys were placed by the Coast Survey of the United States Government;

16th. That owing to the differences in the laws of the States of Louisiana and Mississippi, regulating the oyster industry of the respective States, the said statutes providing penalties for the violation thereof, much confusion has resulted and a great public demand has arisen in Louisiana to definitely mark the boundary line dividing the two States in the waters thereof; that citizens of the State of Mississippi, in violation of the laws of the State of Louisiana, have been fishing oysters with dredges on the natural reefs in the waters of the State of Louisiana, said fishermen claiming that they were in the waters of the State of Mississippi and consequently not violating the laws of the State of Louisiana;

17th. That affairs had reached such a crisis that, to avoid an armed conflict between the sheriff and officers of the parish of St. Bernard in the State of Louisiana and the sheriff and officers of the county of Harrison in the State of Mississippi, a meeting of citizens of the State of Louisiana was called by the governor of the State of Louisiana and held in the city of New Orleans, State of Louisiana, as will be seen from a certified copy of the minutes of said meeting, to-wit:—

“Minutes of a meeting held Saturday, Jan. 19th, 1901, at the office of John Dymond, Jr., No. 339 Carondelet street, New Orleans, La., of the following gentlemen:—

Present: His excellency, Gov. W. W. Heard; Lieutenant Governor Albert Estopinal; Major H. B. Richardson, chief of the board of State engineers; Messrs. Simon Leopold and A. T. Bonvillain, representing the commission appointed by the house of representatives of the State of Louisiana; Mr. H. C. Cage, representing the commission appointed by the senate of the State of Louisiana, and Messrs. J. B. Easterling and R. Perez, representing the committee

from the police jury of the parish of Plaquemines; Albert
 20 Estopinal, Jr., district attorney for the twenty-ninth judicial district; Clem Story and Gus Schoenberger, oyster inspectors, respectively of the parishes of St. Bernard and Plaquemines; Frank C. Mevers, sheriff of the parish of Plaquemines; E. E. Nunez, sheriff of the parish of St. Bernard; Messrs. Paul Renaud, S. M. Fuchich, M. P. Doullut, James Wilkinson and many others.

On request of Mr. Clement Story, Gov. Heard was asked to preside and Mr. John Dymond, Jr., was asked to act as secretary of the meeting. Mr. Clement Story then addressed the meeting upon the

subject of the call, stating that the oyster industry was of much greater magnitude than our people believed ; that it was in need of consideration and protection at the hands of the State officials inasmuch as the existing law failed to provide the means by which to secure the protection of the oyster beds from depredation by citizens of Mississippi, incidentally showing that there was a dispute between the States of Louisiana and Mississippi as to the boundary line dividing the waters of the two States, and that Mississippians were not only fishing oysters with tongs in the State of Louisiana, contrary to the statute, but were fishing them on Louisiana natural reefs with steam dredges, which under the Louisiana law is made a penitentiary offense. Mr. Story called to the attention of the meeting the congressional legislation defining the boundaries of the State of Louisiana and suggested that some action should be taken to secure the co-operation of the State of Mississippi in fixing the boundary line.

Mr. John Dymond, Jr., followed Mr. Story, quoting the law on the subject, and stating to the committee that the Mississippi oyster factories desired to be permitted to go ahead, regardless of the law, pending the fixing of the boundaries, but at the same time calling to the attention of the committee the fact that these tongmen and the dredges from the oyster factories in Mississippi were fishing in waters that were admittedly within the State of Louisiana. He called to the attention of the meeting the fact that Congress could possibly be induced to appropriate a sum sufficient to buoy the boundary line if the States of Louisiana and Mississippi were unable to agree amongst themselves, but suggested that a conference should be had. He also called attention to the necessity of enforcing the law during the interval of establishing a boundary, in order that the oyster industry might be protected.

21 Mr. James Wilkinson then addressed the meeting, showing the immense development of the oyster industry in our sister Atlantic Coast States and demonstrating that the Louisiana oyster industry was susceptible of much greater development than enjoyed in any of those States ; that an acre of oysters would yield 300 barrels, which at \$1.00 a barrel would give gross proceeds of \$300.00 from one acre of oysters ; that there were at least a million acres, if not more, of oyster beds or lands covered with water which could be made into oyster beds along the coast of the State of Louisiana ; that the Northern States appropriated large amounts of money in order to protect their oyster industry while the State of Louisiana so far spent practically no money whatsoever for the purpose.

Mr. Ducate, of the firm of Lopez & Ducate, owners of an oyster factory at Biloxi, Miss., and also of a factory at Neptune, La., then addressed the meeting at some considerable length, denying that his dredges fished oysters in the State of Louisiana, he claiming that the eighteen-mile limit of the State of Mississippi took in some of the marsh islands, or what he called marsh islands, in the

Louisiana marshes. These marsh lands are merely intersected by small bayous and in no sense islands, yet it shows the disposition of the Mississippi people to invade the State of Louisiana, at least to the extent of this disputed territory.

Mr. S. M. Fucich, an oyster receiver of this city, addressed the meeting on the general welfare of the oyster industry, showing the necessity of its protection, calling to the attention of those present that the parish of St. Bernard was the frontier which had to be defended and urging that steps should be taken in this direction.

Messrs. Paul Renaud, Captain M. P. Doullut, F. C. Mevers and many others addressed the meeting.

Lieutenant Gov. Albert Estopinal then proposed the following resolution; which on motion was duly adopted, to-wit:—

Be it *Resolved*, That the governor of the State of Louisiana request the governor of the State of Mississippi to appoint a commission of five gentlemen to confer with a commission to be appointed by the governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys.

22 The above motion being carried, Gov. W. W. Heard announced the appointment of the following gentlemen on the committee, to constitute the commission, to-wit:—

Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sydney F. Lewis and H. C. Cage. Thereupon the meeting adjourned.

(Signed)

W. W. HEARD, Chairman.

(Signed)

JOHN DYMOND, Jr., Secretary."

The original minutes of said meeting being made part of this bill as Exhibit "A."

18th. That to determine amicably the eastern boundary line between the said States, in the waters to the south of the State of Mississippi, and to the east of the southern portion of Louisiana, W. W. Heard, governor of the State of Louisiana, addressed the following communication to his excellency, A. H. Longino, governor of the State of Mississippi, to-wit:—

"State of Louisiana, Executive Department.

BATON ROUGE, January 26, 1901.

His excellency, Governor A. H. Longino, Jackson, Miss.

DEAR SIR: On January 19th an important meeting was held at New Orleans for the purpose of considering the actual condition of the oyster industry, and to devise plans for defining the water boundaries between the States of Mississippi and Louisiana, with the view of extending to the oyster beds the protection contemplated by the laws of these two States.

To enable you to fully ascertain the objects of this meeting and its proceedings, I herewith enclose an official copy thereof together with newspaper clippings which kindly return after perusal. You will observe that a resolution was adopted requesting the governors of Mississippi and Louisiana each to appoint a commission of five to consider the determination of the water boundary line and to arrange for its easy identification by a proper system of buoys.

Pursuant to this resolution I have appointed the following gentlemen: Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sidney F. Lewis and H. C. Cage.

23 I would therefore request that you appoint the commissioners for your State at your earliest convenience.

(Signed)

W. W. HEARD, Governor."

As will be seen from a copy of said letter taken from the letter book in the hands of the governor's private secretary, sworn to by said secretary and made part of this bill, marked Exhibit "B."

19th. That his excellency, A. H. Longino, governor of the State of Mississippi, in response to the foregoing, then addressed to his excellency, W. W. Heard, governor of the State of Louisiana, the following communication, to-wit:—

"EXECUTIVE DEPARTMENT,
JACKSON, MISSISSIPPI, February 9, 1901.

His excellency, Gov. W. W. Heard, Baton Rouge, La.

DEAR GOVERNOR: I have the honor to inform you that I have this day appointed the following named gentlemen as commissioners from this State to confer with the commissioners appointed by you to determine the water boundary line between the two States, to-wit:—

Hon. E. J. Bowers, Bay St. Louis, Miss.

Mr. A. Keller, Bay St. Louis, Miss.

Hon. W. A. White, Biloxi, Miss.

Mr. Harry T. Howard, Biloxi, Miss.

Hon. J. I. Ford, Scranton, Miss.

I have the honor, to be, sir,

Very truly yours,

(Signed)

A. H. LONGINO, Governor."

The original of which said letter is made a part of this bill marked Exhibit "C."

20th. Your orator avers that this joint commission on boundary met in the city of New Orleans, State of Louisiana, on the 26th of March, 1901, as will appear from a certified copy of the minutes of said meeting as follows, to wit:—

- 24 "Minutes of the meeting of the joint commissions appointed by Gov. W. W. Heard on the part of the State of Louisiana, and Gov. A. H. Longino on the part of the State of Mississippi, to confer as to the boundary line between the two States in the waters thereof, held at the office of Mr. John Dymond, Jr., Tuesday, March 26th, 1901, at 10 a. m.

Present: Mississippi commission:—Harry T. Howard, chairman; Hon. W. A. White, Hon. E. J. Bowers, Hon. J. I. Ford. Absent: Hon. A. Kellar.

Louisiana commissioners:—Hon. Albert Estopinal, Jr., chairman; Mr. John Dymond, Jr., secretary; Hon. Clem Story, Col. Sidney F. Lewis and Senator H. C. Cage.

The meeting was called to order by Hon. Albert Estopinal, Jr., chairman of the Louisiana commission, and upon roll call by Mr. John Dymond, Jr., the above personnel was announced to be present.

Mr. Albert Estopinal, Jr., stated the purposes of the meeting and suggested that Mr. Harry Howard, chairman of the Mississippi commission, should be elected chairman of the joint meeting of the two commissions.

On motion of Mr. John Dymond, Jr., seconded by Hon. Clement Story, Mr. Harry T. Howard was elected chairman of the joint session.

On motion of Hon. H. C. Cage, seconded by Hon. E. J. Bowers, Mr. John Dymond, Jr., was elected secretary of the joint session.

Commissioner W. A. White stated to the assembly that the Mississippi commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story, that a recess of the joint commission be taken until 11:30 a. m. This motion was put and adopted, and the meeting then took a recess until 11:30 a. m.

At 11:30 a. m. after recess, the meeting was again called to order by Chairman Harry T. Howard.

Present: Messrs. Howard, White, Bowers, Ford, Estopinal, Story, Lewis, Cage and Dymond.

Mr. John Dymond, Jr., at the request of the Louisiana commission, then presented to the Mississippi commission the views of the

- 25 Louisiana commissioners on the subject of the boundary line in the waters between the two States. Mr. Dymond stated that there was no justification for the popular opinion of confusion as to the boundary between the two States; that there was in truth and fact no confusion; that the eastern boundary of the State of Louisiana in the waters between that State and the State of Mississippi originally ran through the Rigolets and extended to the Gulf following the deep water channel; that by the act of 1812 annexing the territory west of the Pearl river the eastern boundary of Louisiana was extended to the mouth of the Pearl river, from which point the line joined the original water boundary and extended to

the Gulf by the deep water channel, passing to the eastward of Chandeleur islands. This boundary entirely agreed with the boundary subsequently given to the State of Mississippi when it was admitted as a State to the Union, inasmuch as its boundary began at a point ten miles east of Pascagoula river, thence ran westwardly, including islands within eighteen miles of the coast, and that in following this westwardly direction the boundary took the deep water channel which made it coincide with the boundary of the State of Louisiana.

This view of the matter having been presented a general discussion followed during which the members of the Mississippi boundary commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time.

On motion of Hon. E. J. Bowers, seconded by Hon. H. C. Cage, the Louisiana boundary commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi commission subsequently, and that they in turn should endorse their views thereon.

The motion was put and carried.

The Louisiana commission thereupon invited the Mississippi commission to luncheon at the Cosmopolitan hotel, whereupon on motion of Hon. Clement Story, duly seconded, the meeting adjourned subject to the call of the chairman.

(Signed)

JOHN DYMOND, JR., Secretary.

(Signed)

H. T. HOWARD, Chairman."

Which said original minutes are now made a part of this bill marked Exhibit "D," and the said original map, the subject of discussion, is now made a part of this bill marked Exhibit "E."

26 21st. That the said commission appointed on the part of the State of Mississippi met, after some five months' delay, and on July 20th, 1901, submitted its reply to the Louisiana commission as follows, to wit:—

"Hon. Albert Estopinal, Jr., chairman Louisiana boundary commission :

The commission appointed by the State of Mississippi to confer with a like commission appointed by the State of Louisiana, having met and considered maturely the claims advanced by the Louisiana commission, and having examined the line as delineated by that body and submitted with said claims, are unable to concede the line as claimed by the State of Louisiana, and as marked and set forth upon the map filed with said claim.

The difference between the line marked by your honorable body and that which we conceive is the true boundary is so great that we

have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition.

The Mississippi commission considers as islands considerable territory which the Louisiana commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.

Bay St. Louis, Miss., July 20, 1901.

(Signed)

H. T. HOWARD, Chairman.

J. I. FORD, Secretary.

E. J. BOWERS.

W. A. WHITE.

AUG. KELLER."

Which said original document is now made a part of this bill marked Exhibit "F."

27 22nd. Your orator now avers that, as will appear from the foregoing, the State of Louisiana has exhausted all means whereby the said boundary line might be established amicably, except for the suggestion made by the State of Mississippi through its commission in its foregoing reply and contained in the following language:—

"It is apparent that the only hope of a settlement is a friendly suit in the Supreme Court of the United States, and we respectfully suggest that course."

23rd. Now your orator avers that it is entitled to appeal for relief to your honors, as one of the causes influencing the establishment by the Constitution of the United States of America, of your august tribunal, was the determining of disputed boundaries between sovereign States of the Union and that the right and power is therefore within your jurisdiction to fix and determine the boundary line dividing the States of Louisiana, south of the State of Mississippi, in the waters lying between the said States;

24th. That the eastern water boundary line as claimed by your orator, viz: a line beginning at the most southern junction of the channel of the east branch of the Pearl river with Lake Borgne and thence eastward following the deep water channel to the north of Half Moon island, through the Mississippi Sound channel, to Cat Island pass, northeast of Isle à Pitre into the gulf of Mexico, thereby dividing the waters between the two States, agrees, and is in accord, with the acts of Congress creating respectively the State of Louisiana and the State of Mississippi as already shown by diagram No. 5; that any other boundary than the deep water channel as aforesaid would cause the limits of the two States to conflict and overlap, and that it is not to be presumed that the Congress of the United

States intended to, or would establish, in its description, a boundary for the State of Mississippi, conflicting with the already existing

28 Louisiana eastern boundary, when there is a construction of the wording of the two acts, in fact the only construction that suggests itself, that shows a boundary readily ascertained, harmonizing with the words of the acts as they now read, and clearly defining the limits of the two States in the waters between them.

25th. Your orator further avers that the use of the word "*westwardly*" in the description of the southern boundary of the State of Mississippi, as that southern boundary line extends westwardly from the Alabama State line to the Louisiana eastern boundary line, shows that it was not the intention of Congress to have it run direct or due west throughout the whole course, and that it was evidently the intention of Congress, in giving to the State of Mississippi the islands north of that westwardly drawn line, that the eighteen-mile limit shall gradually decrease as it approached the Louisiana line on the east till it met and followed it to its source. If the Mississippi line ran parallel to the southern coast of Mississippi, at a distance of eighteen miles from such coast line following the meander of the coast, and thence joined at right angles a line emerging from the mouth of Pearl river, such line would not only include Grassy, Half Moon, Round, Le Petit Pass islands and Isle à Petre, already belonging to Louisiana as being within nine miles or three leagues of the Louisiana shore line, but such line would also include part of the mainland of the State of Louisiana as will be seen from the following diagram (No. 6) made a part of this bill, and it certainly could not have been the intention of Congress to take away from the State of Louisiana any islands or mainland already belonging to it and to give them to the State of Mississippi, as such a proceeding, without the consent of the legislature of the State of Louisiana, would be in violation of sec. 3 of art. IV of the Constitution of the United States.

26th. Your orator avers that the marsh lands claimed by the State of Mississippi to be islands are in truth, with the exception of the Isle à Pitre, Grassy, Half Moon, Round and Le Petit Pass islands, low lying marsh lands forming part of the mainland of the
29 State of Louisiana; that said swamp or marsh lands and islands have been known as and called since time immemorial "the Louisiana marshes;" that they were approved to the State of Louisiana by the Commissioner of the General Land Office on May 6, 1852, as will appear from a certified copy of said record of approval from the United States Land Office made a part of this bill, marked Exhibit "G," and where not since sold by the State of Louisiana to private purchasers have always stood on the books of the register of the Louisiana State land office as State lands, to be offered for sale, until recently transferred by the State of Louisiana to the board of commissioners for the Lake Borgne basin levee district by the provisions of act No. 14 of the legislature of the State of Louisiana for the year 1892, for the purpose of enabling the said

levee board, by the proceeds of sale of said lands to secure the funds to aid in the building of levees in that levee district, to protect the lands from overflow.

27th. That parts of said disputed territory claimed by the State of Mississippi to be islands within eighteen miles of its shore line are in fact part of the mainland of the State of Louisiana, and therefore belong to and form part of said State of Louisiana, but if your honors should feel that any part of this disputed area was islands by reason of the presence of shallow water, then as islands they are within the nine mile limit of distance from the shore line of the State of Louisiana and therefore belong to and form part of the State of Louisiana by that second provision of the act of Congress giving Louisiana all islands within three leagues of its shore line.

28th. Your orator further avers that where contiguous States or countries are separated by water it is, and always has been, the custom to regard the *channel* as establishing the boundary line of such States, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own constitution adopted November, 1890, in the following words:—

30 “The limits and boundaries of the State of Mississippi are as follows, to wit:—Beginning on the Mississippi river (*meaning thereby the center of said river or thread of the stream*) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and V. Petrie, commissioners appointed for that purpose on the part of the State of Mississippi A. D. 1837 and J. D. Graham and Austin Miller, commissioners appointed for that purpose on the part of the State of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee river, six four-pole chains south of and above the mouth of Yellow creek; thence up the said river to the mouth of Bear creek; thence by a direct line to what was formerly the northwest corner of the county of Washington, Ala.; thence on a direct line to a point ten miles east of the Pascagoula river on the gulf of Mexico; thence westwardly including all the islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne; thence up said Pearl river to the 31st degree of north latitude; thence west along said degree of latitude to the middle or thread of the stream of the Mississippi river; thence up the middle of the Mississippi river or thread of the stream to the place of beginning, including all islands lying east of the thread of the stream of said river, and also including all lands which were at any time heretofore a part of this State.”

29th. Your orator avers that as heretofore stated the Congress of the United States, as well as the various departments of the United States Government having authority in the premises, have themselves recognized the boundary line contended for by the State of Louisiana, by reason of the fact that the United States Government has confirmed to the State of Louisiana the lands composing Half

Moon island which is just south of the deep water channel, and which island is composed of section 36 of township 10 S. R. 17 east, sections 29, 31, 32 and 33 of township 10 S. R. 18 east; section 1 of township 11, S. R. 17 east; sections 5 and 6 of township 11, S. R. 18 east, in the south-eastern land district of Louisiana, east of the Mississippi river; and that the lands forming what is commonly known as Isle à Pitre and being in sections 23, 24, 25, 26, 27, 28, 32, 33 and 34 of township 10, S. R. 20 east, and in fact all of the remaining lands in township 11, S. R. 17 east; township 11, S. R. 18 east; township 11, S. R. 19 east; township 11, S. R. 20 east; township 12, S. R. 16 east; township 12, S. R. 17 east; township 12, S. R. 18 east; township 12, S. R. 19 east; township 12, S. R. 20 east; township 13, S. R. 16 east; township 13, S. R. 17 east; township 13, S. R. 18 east; township 13, S. R. 19 east; township 13, S. R. 20 east; in the aforesaid land district, and parts of which are claimed by the State of Mississippi under its right angle line to belong to the State of Mississippi, have in fact been also confirmed to the State of Louisiana by the United States Government, and are recognized as belonging to and forming part of the State of Louisiana by the said United States Government and have always heretofore been so recognized by the people of the said two States; that the lands forming the Isle à Pitre were sold by the State of Louisiana to Richard Pindell on March 20, 1867, as per land patents of the State of Louisiana Nos. 194, 195 and 196, that Pindell sold to H. J. Leovy on April 18, 1867, by acts of sale before Geo. W. Christy, a notary public of the State of Louisiana, certified copies of said State land patents and said notarial acts being made part of this bill, marked Exhibits "H," "I," "J," "K" and "Z," and are now owned by the Messrs. Gilmore of the State of Louisiana, who acquired the said, and other, lands from Leovy on March 2, 1892, by two acts of purchase before Theo. Cotruvo, a notary public of the State of Louisiana, certified copies of said notarial acts being made a part of this bill, marked Exhibits "L" and "M," and said lands have been assessed on the assessment rolls of the parish of St. Bernard, State of Louisiana, and taxes thereon have been paid to the State of Louisiana for the past 35 years, and said lands have never been assessed on the rolls of, nor have any taxes ever been paid to, the State of Mississippi and that this is the case with all the other lands and islands now claimed by the State of Mississippi, but which in truth and fact belong to the State of Louisiana.

30th. Your orator therefore further avers that all constituted authorities competent to create, adopt or consider the said boundary line have declared the water boundary line claimed by the State of Louisiana, viz: the deep water channel running from the most southern junction of the eastern mouth of Pearl river, through Lake Borgne, north of Half Moon island, through Mississippi sound, north of Isle à Pitre and southwest of Cat island, through Cat Island pass, through Chandeleur sound northeast of Chandeleur islands, to the

gulf of Mexico, to be the true water boundary between the said States.

To the end therefore that the said defendants may, if they can, show why your orator should not have the relief prayed for and may, according to the best and utmost of their several respective knowledge, remembrance, information and belief, full true, direct and perfect answer make to the matters and things averred in this bill, an answer under oath being herewith specially waived, may it please your honors to grant to your orator the most gracious writ of subpoena directed to the said State of Mississippi, and to said Andrew H. Longino, governor of the State of Mississippi, and Monroe McClurg, attorney general of the State of Mississippi, commanding them and each of them to be and appear in this honorable court on a day to be therein named, and to abide the judgment of this court.

And after due proceedings may it please your honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louis-

iana is the deep water channel, commencing at the most
33 southern junction of the eastern mouth of Pearl river with

Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon island through Mississippi sound, north of Isle à Pitre, through Cat Island Pass channel, southwest of Cat island, through Chandeleur Island sound, northeast of the Chandeleur islands, to the gulf of Mexico, as is delineated on the original map submitted by the Louisiana boundary commission to the Mississippi boundary commission and now made part of this bill marked Exhibit "E," that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

STATE OF LOUISIANA, {
Parish of Orleans. }

Personally came and appeared before me the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the governor of the State of Louisiana; that he has read

the foregoing bill, and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

W. W. HEARD, Governor.

Sworn to and subscribed before me this 14th day of October, 1902.

ALVIN EDWARD HEBERT,
Notary Public.

[SEAL.]

34 (Endorsed :) Supreme Court, U. S. October term 1902.
Term No. 12, orig'l. State of Louisiana, complainant, vs. State of Mississippi. Bill of complaint. Filed October 27, 1902.

35 And on the same day, to wit, on the 27th day of October, A. D. 1902, Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and Z to the bill of complaint were filed in the words and figures following, to wit :

36 EXHIBIT A TO BILL OF COMPLAINT.

" Minutes of a meeting held Saturday, Jan. 19th, 1901, at the office of John Dymond, Jr., No. 339 Carondelet street, New Orleans, La., of the following gentlemen :—

Present : His excellency, Gov. W. W. Heard ; Lieutenant Governor Albert Estopinal ; Major H. B. Richardson, chief of the board of State engineers ; Messrs. Simon Leopold and A. T. Bouvillain, representing the commission appointed by the house of representatives of the State of Louisiana ; Mr. H. C. Cage, representing the commission appointed by the senate of the State of Louisiana, and Messrs. J. B. Easterling and R. Perez, representing the committee from the police jury of the parish of Plaquemines ; Albert Estopinal, Jr., district attorney for the twenty-ninth judicial district ; Clem Story and Gus Schoenberger, oyster inspectors, respectively of the parishes of St. Bernard and Plaquemines ; Frank C. Meyers, sheriff of the parish of Plaquemines ; E. E. Nunez, sheriff of the parish of St. Bernard ; Messrs. Paul Renaud, S. M. Fuchich, M. P. Doullut, James Wilkinson and many others.

On request of Mr. Clement Story, Gov. Heard was asked to preside and Mr. John Dymond, Jr., was asked to act as secretary of the meeting. Mr. Clement Story then addressed the meeting upon the subject of the call, stating that the oyster industry was of much greater magnitude than our people believed ; that it was in need of consideration and protection at the hands of the State officials inasmuch as the existing law failed to provide the means by which to secure the protection of the oyster beds from depredation by citizens of Mississippi, incidentally showing that there was a dispute between the States of Louisiana and Mississippi as to the boundary line dividing the waters of the two States, and that Mississippians were not

only fishing oysters with tongs in the State of Louisiana, contrary to the statute, but were fishing them on Louisiana natural reefs with steam dredges, which under the Louisiana law is made a penitentiary offense. Mr. Story called to the attention of the meeting the congressional legislation defining the boundaries of the State of Louisiana and suggested that some action should be taken to secure the co-operation of the State of Mississippi in fixing the boundary line.

Mr. John Dymond, Jr., followed Mr. Story, quoting the law on the subject, and stating to the committee that the Mississippi oyster factories desired to be permitted to go ahead, regardless of the law, pending the fixing of the boundaries, but at the same time calling to the attention of the committee the fact that these tongmen and the dredges from the oyster factories in Mississippi were fishing in waters that were admittedly within the State of Louisiana. He called to the attention of the meeting the fact that Congress could possibly be induced to appropriate a sum sufficient to buoy the boundary line if the States of Louisiana and Mississippi were unable to agree amongst themselves, but suggested that a conference should be had. He also called attention to the necessity of enforcing the law during the interval of establishing a boundary, in order that the oyster industry might be protected.

37 Mr. James Wilkinson then addressed the meeting, showing the immense development of the oyster industry in our sister Atlantic Coast States and demonstrating that the Louisiana oyster industry was susceptible of much greater development than enjoyed in any of those States; that an acre of oysters would yield 300 barrels, which at \$1.00 a barrel would give gross proceeds of \$300.00 from one acre of oysters; that there were at least a million acres, if not more, of oyster beds or lands covered with water which could be made into oyster beds along the coast of the State of Louisiana; that the Northern States appropriated large amounts of money in order to protect their oyster industry while the State of Louisiana so far spent practically no money whatsoever for the purpose.

Mr. Ducate, of the firm of Lopez & Ducate, owners of an oyster factory at Biloxi, Miss., and also of a factory at Neptune, La., then addressed the meeting at some considerable length, denying that his dredges fished oysters in the State of Louisiana, he claiming that the eighteen-mile limit of the State of Mississippi took in some of the marsh islands, or what he called marsh islands, in the Louisiana marshes. These marsh lands are merely intersected by small bayous and in no sense islands, yet it shows the disposition of the Mississippi people to invade the State of Louisiana, at least to the extent of this disputed territory.

Mr. S. M. Fucich, an oyster receiver of this city, addressed the meeting on the general welfare of the oyster industry, showing the necessity of its protection, calling to the attention of those present that the parish of St. Bernard was the frontier which had to be defended and urging that steps should be taken in this direction.

Messrs. Paul Renaud, Captain M. P. Doullut, F. C. Mevers and many others addressed the meeting.

Lieutenant Gov. Albert Estopinal then proposed the following resolution, which on motion was duly adopted, to-wit:—

Be it *Resolved*, That the governor of the State of Louisiana request the governor of the State of Mississippi to appoint a commission of five gentlemen to confer with a commission to be appointed by the governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys.

The above motion being carried, Gov. W. W. Heard announced the appointment of the following gentlemen on the committee, to constitute the commission, to-wit:—

Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sydney F. Lewis and H. C. Cage. Thereupon the meeting adjourned.

W. W. HEARD, Chairman.

JOHN DYMOND, JR., Secretary."

(Endorsed :) Supreme Court U. S., October term, 1902. Term No. 12, original. State of Louisiana, complainant, vs. State of Mississippi. Exhibit A to bill of complaint. Filed October 27, 1902.

38

EXHIBIT B TO BILL OF COMPLAINT.

"State of Louisiana, Executive Department.

BATON ROUGE, January 26, 1901.

His excellency, Governor A. H. Longino, Jackson, Miss.

DEAR SIR: On January 19th an important meeting was held at New Orleans for the purpose of considering the actual condition of the oyster industry, and to devise plans for defining the water boundaries between the States of Mississippi and Louisiana, with the view of extending to the oyster beds the protection contemplated by the laws of these two States.

To enable you to fully ascertain the objects of this meeting and its proceedings, I herewith enclose an official copy thereof together with newspaper clippings which kindly return after perusal. You will observe that a resolution was adopted requesting the governors of Mississippi and Louisiana each to appoint a commission of five to consider the determination of the water boundary line and to arrange for its easy identification by a proper system of buoys.

Pursuant to this resolution I have appointed the following gentlemen: Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sidney F. Lewis and H. C. Cage.

I would therefore request that you appoint the commissioners for your State at your earliest convenience.

(Signed)

W. W. HEARD, Governor."

Inclosure—Copy of proceedings of meeting and clippings.

STATE OF LOUISIANA, }
 Parish of Baton Rouge. }

I, Leon Jastremski, do solemnly swear, that I am the private secretary of his excellency, William W. Heard, governor of the State of Louisiana; that the letter on the reverse hereof addressed to his excellency Governor A. H. Longino, of the State of Mississippi, is a true copy of a letter copied in the letter book of the executive department of the State of Louisiana, and mailed to said governor.

LEON JASTREMSKI.

Sworn to and subscribed before me this seventeenth day of September 1902.

EUGENE J. MCGIVNEY,

Ass't Sec't'y of State.

[SEAL.]

I, the undersigned authority do hereby certify that Gen. Leon Jastremski is the private secretary of his excellency, William W. Heard, governor of the State of Louisiana, and that his signature is to me well known, and that his signature to the above certificate is his genuine signature.

EUGENE J. MCGIVNEY,

Ass't Sec't'y of State.

[SEAL.]

(Endorsed :) Supreme Court U. S. October term 1902. Term No. 12 original. State of Louisiana, complainant, vs. State of Mississippi. Exhibit B to bill of complaint. Filed October 27, 1902.

EXHIBIT C TO BILL OF COMPLAINT.

R. Feb. 12, 1901.

"EXECUTIVE DEPARTMENT,

JACKSON, MISSISSIPPI, February 9, 1901.

His excellency, Gov. W. W. Heard, Baton Rouge, La.

DEAR GOVERNOR: I have the honor to inform you that I have this day appointed the following named gentlemen as commissioners from this State to confer with the commissioners appointed by you to determine the water boundary line between the two States, to-wit:—

Hon. E. J. Bowers, Bay St. Louis, Miss.

Mr. A. Keller, Bay St. Louis, Miss.

Hon. W. A. White, Biloxi, Miss.

Mr. Harry T. Howard, Biloxi, Miss.

Hon. J. I. Ford, Scranton, Miss.

I have the honor to be sir,

Very truly yours,

(Signed)

A. H. LONGINO, Governor."

(Endorsed :) Supreme Court U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, vs. State of Mississippi. Exhibit C to bill of complaint. Filed October 27, 1902.

EXHIBIT D TO BILL OF COMPLAINT.

" Minutes of the meeting of the joint commissions appointed by Gov. W. W. Heard on the part of the State of Louisiana, and Gov. A. H. Longino on the part of the State of Mississippi, to confer as to the boundary line between the two States in the waters thereof, held at the office of Mr. John Dymond, Jr., Tuesday, March 26th, 1901, at 10 a. m.

Present: Mississippi commission:—Harry T. Howard, chairman; Hon. W. A. White, Hon. E. J. Bowers, Hon. J. I. Ford. Absent:—Hon. A. Kellar.

Louisiana commissioners:—Hon. Albert Estopinal, Jr., chairman; Mr. John Dymond, Jr., secretary; Hon. Clem Story, Col. Sidney F. Lewis and Senator H. C. Cage.

The meeting was called to order by Hon. Albert Estopinal, Jr., chairman of the Louisiana commission, and upon roll call by Mr. John Dymond, Jr., the above personnel was announced to be present.

Mr. Albert Estopinal, Jr., stated the purposes of the meeting and suggested that Mr. Harry Howard, chairman of the Mississippi commission, should be elected chairman of the joint meeting of the two commissions.

On motion of Mr. John Dymond, Jr., seconded by Hon. Clement Story, Mr. Harry T. Howard was elected chairman of the joint session.

On motion of Hon. H. C. Cage, seconded by Hon. E. J. Bowers, Mr. John Dymond, Jr., was elected secretary of the joint session.

Commissioner W. A. White stated to the assembly that the Mississippi commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story, that a recess of the joint commission be taken until 11:30 a. m. This motion was put and adopted, and the meeting then took a recess until 11:30 a. m.

At 11:30 a. m., after recess, the meeting was again called to order by Chairman Harry T. Howard.

Present: Messrs. Howard, White, Bowers, Ford, Estopinal, Story, Lewis, Cage and Dymond.

Mr. John Dymond, Jr., at the request of the Louisiana commission, then presented to the Mississippi commission the views of the

43 Louisiana commissioners on the subject of the boundary line in the waters between the two States. Mr. Dymond stated that there was no justification for the popular opinion of confusion as to the boundary between the two States; that there was in truth and fact no confusion; that the eastern boundary of the State of Louisiana in the waters between that State and the State of Mississippi originally ran through the Rigolets and extended to the Gulf following the deep water channel; that by the act of 1812 an-

nexing the territory west of the Pearl river the eastern boundary of Louisiana was extended to the mouth of the Pearl river, from which point the line joined the original water boundary and extended to the Gulf by the deep water channel, passing to the eastward of Chandeleur islands. This boundary entirely agreed with the boundary subsequently given to the State of Mississippi when it was admitted as a State to the Union, inasmuch as its boundary began at a point ten miles east of Pascagoula river, thence ran westwardly, including islands within eighteen miles of the coast, and that in following this westwardly direction the boundary took the deep water channel which made it coincide with the boundary of the State of Louisiana.

This view of the matter having been presented a general discussion followed during which the members of the Mississippi boundary commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time.

On motion of Hon. E. J. Bowers, seconded by Hon. H. C. Cage, the Louisiana boundary commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi commission subsequently, and that they in turn should endorse their views thereon.

The motion was put and carried.

The Louisiana commission thereupon invited the Mississippi commission to luncheon at the Cosmopolitan hotel, whereupon on motion of Hon. Clement Story, duly seconded, the meeting adjourned subject to the call of the chairman.

JOHN DYMOND, JR., Secretary.
H. T. HOWARD, Chairman."

(Endorsed :) Supreme Court U. S. October term 1902. Term No. 12, orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit D to bill of complaint. Filed October 27, 1902.

44 NOTE.—Exhibit E to bill of complaint is a map not reproduced here but bound into the Complainant's Atlas of Maps at page 60 thereof.

45 EXHIBIT F TO BILL OF COMPLAINT.

"Hon. Albert Estopinal, Jr., chairman Louisiana boundary commission:

The commission appointed by the State of Mississippi to confer with a like commission appointed by the State of Louisiana, having met and considered maturely the claims advanced by the Louisiana commission, and having examined the line as delineated by that

body and submitted with said claims, are unable to concede the line as claimed by the State of Louisiana, and as marked and set forth upon the map filed with said claim.

The difference between the line marked by your honorable body and that which we conceive is the true boundary is so great that we have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition.

The Mississippi commission considers as islands considerable territory which the Louisiana commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.

Bay St. Louis, Miss., July 20, 1901.

(Signed)

H. T. HOWARD, Chairman.

J. I. FORD, Secretary.

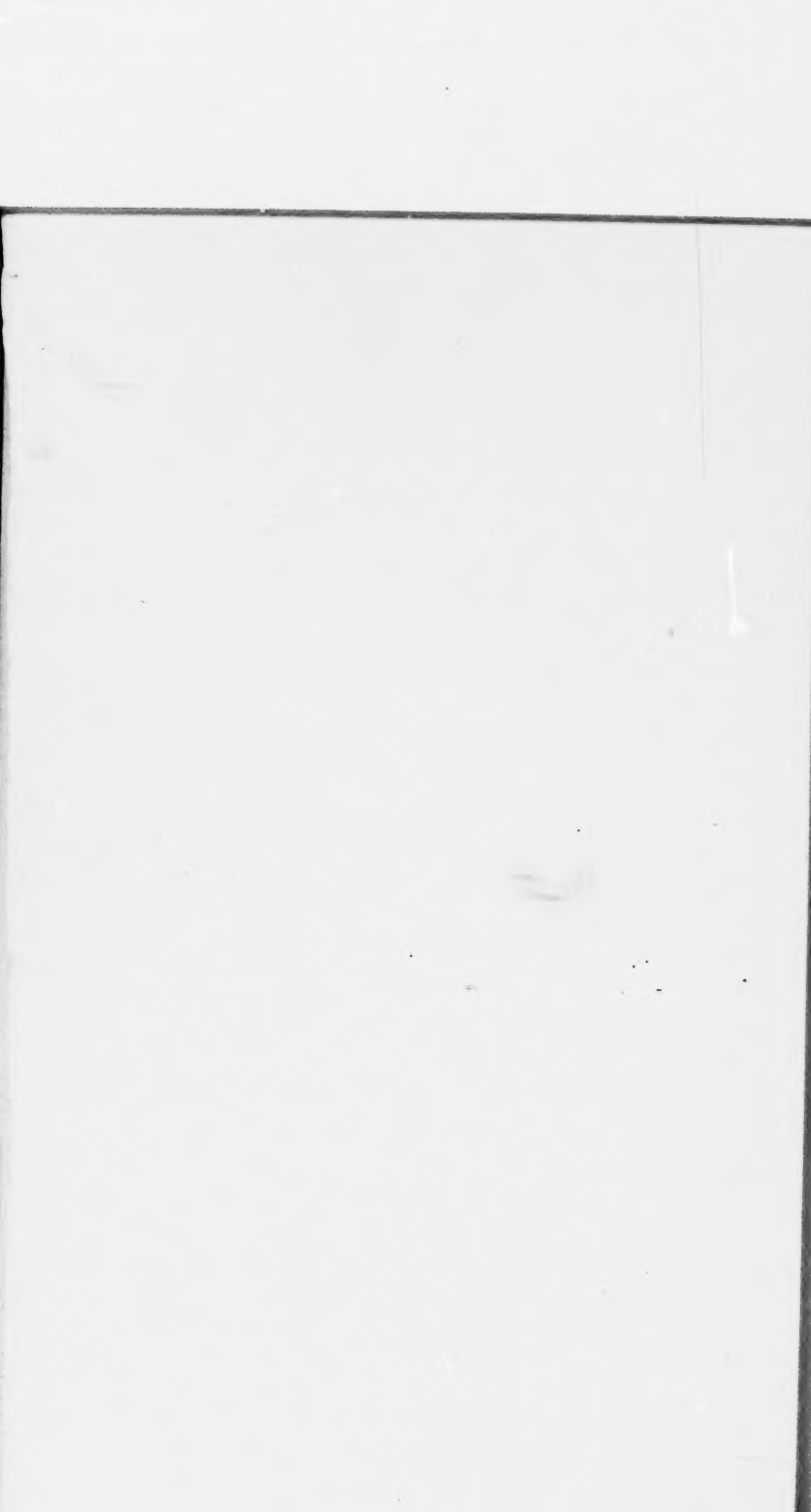
E. J. BOWERS.

W. A. WHITE.

AUG. KELLER."

(Endorsed :) Supreme Court U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, vs. State of Mississippi. Exhibit F to bill of complaint. Filed October 27, 1902.

(Here follows Exhibit G to bill of complaint.)



RANGE No. 16 East, DISTRICT OF New Orleans E. Dist. East of River.

DESCRIPTION OF TRACT.				CONTESTS		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER.	DATE OF SALE.	REMARKS ON DEED AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.		
PART OF SECTION.	SECTION.	TOWNSHIP.	RANGE.	ACRES.	100 AC.	DOLLARS.	CENTS.	DOLLARS.	CENTS.						VOLUME.	PAGE.	
All of section ✓	13	12 S	16 E	}						Selected by State under	Act March 2, 1849.	Approved by Secretary of Interior May 6-1852. According to the provisions of Sec 2 of the Act.					
"	14	"	"														
"	22	"	"														
"	23	"	"														
"	24	"	"														
"	25	"	"														
"	26	"	"														
"	27	"	"														
"	34	"	"	}													
"	35	"	"														
"	36	"	"														
All of section ✓	1	13 S	16 E	}						Selected by State under	Act March 2, 1849.	Approved by Secretary of Interior May 6-1852. According to the provisions of Sec 2 of the Act.					
"	2	"	"														
"	3	"	"														
"	11	"	"														
"	12	"	"														
"	13	"	"														
"	14	"	"														
"	15	"	"														
"	21	"	"														
"	22	"	"														
"	23	"	"														
"	32	"	"														
"	33	"	"														
"	34	"	"														
"	35	"	"														
"	36	"	"														

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONVERTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
Section	26	10 S	17 E	}						Selected by State under Act
	27	"	"							
	28	"	"							
	29	"	"							
	30	"	"							
	31	"	"							
	32	"	"							
	33	"	"							
	34	"	"							
	35	"	"							
	36	"	"							
Section Y	1	11 S	17 E	}						Selected by State under Act
	2	"	"							
	11	"	"							
	14	"	"							
	22	"	"							
	23	"	"							
	25	11 S	17 E							
	26	"	"							
	27	"	"							
	28	"	"							
	33	"	"							
	34	"	"							
	35	"	"							
	36	"	"							
Section V	1	12 S	17 E	}						Selected by State under Act
	2	"	"							
	3	"	"							
	4	"	"							
	7	"	"							
	8	"	"							
	9	"	"							
	10	"	"							
	11	"	"							
	12	"	"							
	13	"	"							
	14	"	"							
	15	"	"							
	17	"	"							
	18	"	"							
	19	"	"							
	20	"	"							
	21	"	"							
	22	"	"							
	29	"	"							
	36	"	"							

+ 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35

DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PAYMENT	WHERE RECORDED	
				Volume	Page
<i>Ref March 2 - 1869 - Approved by Secretary Interior May 6 - 1872 -</i>					
<i>March 2 - 1869 - approved by Secretary Interior May 6 - 1872 -</i>					
<i>March 2 - 1869 - Approved by Secretary Interior May 6 - 1872 -</i>					

TOWNSHIP No. 13 South

DESCRIPTION OF TRACT				CURRENCIES		RATIO PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER
PART OF SECTION	Section	Township	Range	Dollars	Cents	Dollars	Cents	Dollars	Cents	
All of Section ✓	1	13S	17E			Selected by State under a				
All of Section	2	13S	17E			"	"	"	"	"
All of Section	3	13S	17E			"	"	"	"	"
All of Section	4	13S	17E			"	"	"	"	"
All of Section	5	13S	17E			"	"	"	"	"
All of Section	6	13S	17E			"	"	"	"	"
All of Section	7	13S	17E			"	"	"	"	"
All of Section	8	13S	17E			"	"	"	"	"
All of Section	9	13S	17E			"	"	"	"	"
All of Section	10	13S	17E			"	"	"	"	"
All of Section	11	13S	17E			"	"	"	"	"
All of Section	12	13S	17E			"	"	"	"	"
All of Section	13	13S	17E			"	"	"	"	"
All of Section	14	13S	17E			"	"	"	"	"
All of Section	15	13S	17E			"	"	"	"	"
All of Section	17	13S	17E			"	"	"	"	"
All of Section	18	13S	17E			"	"	"	"	"

At

REVENUE ACT OF 1869, DISTRICT OF New Orleans -									
INCREASE	DATE OF SALE	STREET OR NUMBER AND CORNER OF LOT	TO WHOM PATENTED	DATE OF PAYMENT	WHERE DEPOSITED				
					Taken	Paid			
for Act	March 2, 1869. Approved by Comptroller Interior May 6, 1871								
								</	

TOWNSHIP No. 13 S. 0

DESCRIPTION OF TRACT				Ownership		Rents and Taxes		Purchase Money		NAME OF THE PURCHASER
Part of Section	Section	Township	Range	Acres	Value	Dollars	Cents	Dollars	Cents	
All of Section	20	13 S	10 R							Collected by State Auditor Rec
All of Section	21	13 S	10 R							"
All of Section	22	13 S	10 R							"
All of Section	23	13 S	10 R							"
All of Section	24	13 S	10 R							"
All of Section	25	13 S	10 R							"
All of Section	26	13 S	10 R							"
All of Section	27	13 S	10 R							"
All of Section	28	13 S	10 R							"
All of Section	29	13 S	10 R							"
All of Section	30	13 S	10 R							"
All of Section	31	13 S	10 R							"
All of Section	32	13 S	10 R							"
All of Section	33	13 S	10 R							"
All of Section	34	13 S	10 R							"
All of Section	35	13 S	10 R							"
All of Section	36	13 S	10 R							"

20

[illegible]

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.	
Part of Section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.		
All of Township excepting Sec 16 -	✓		10 S 108.	Selected by the State under Act							
✓ All of Section	5	}	11 S 108.	Selected by State under Act-							
	6										
	30.										
	31										
	32										
	33										
	34										
	35										
	36										
✓ All of Section	1		12 S 108	Selected by State under Act-							
All of Section	2		12 S 108	" " " "							
All of Section	3		12 S 108	" " " "							
All of Section	4		12 S 108	" " " "							
All of Section	5		12 S 108	" " " "							
All of Section	6		12 S 108	" " " "							
All of Section	7		12 S 108	" " " "							
All of Section	8		12 S 108	" " " "							
All of Section	9		12 S 108	" " " "							
All of Section	10		12 S 108	" " " "							
All of Section	11		12 S 108	" " " "							

TOWNSHIP No. 12 S.

RANGE No. 188, DISTRICT OF New Orleans

22

DESCRIPTION OF TRACT.				COUNTRY.		RANGE PER ACER.		PURCHASE MONEY.		NAME OF THE PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
TRACT OF NOTICE.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
All of Section	13	125	188	Selected by State under act							March 2-1849-	Approved by Secretary Interior	May 6-1852.			
All of Section	14	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	15	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	17	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	18	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	19	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	20	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	21	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	22	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	23	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	24	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	25	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	26	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	29	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	30	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	31	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	32	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	33	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	34	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	35	125	188	"		"		"		"	"	"	"	"	"	"
All of Section	36	125	188	"		"		"		"	"	"	"	"	"	"

TOWNSHIP No. 18 S.

DESCRIPTION OF TRACT				CONTENTS		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER	
PART OF SECTION	Section	Township	Range	Acres	Decimals	Dollars	Cents	Dollars	Cents		
All of Section	1	13 S	18 E	Selected by State under Act							
All of Section	2	13 S	18 E								
All of Section	3	13 S	18 E								
All of Section	4	13 S	18 E								
All of Section	5	13 S	18 E								
All of Section	6	13 S	18 E								
All of Section	7	13 S	18 E								
All of Section	8	13 S	18 E								
All of Section	9	13 S	18 E								
All of Section	10	13 S	18 E								
All of Section	11	13 S	18 E								
All of Section	12	13 S	18 E								
All of Section	13	13 S	18 E								
All of Section	14	13 S	18 E								
All of Section	15	13 S	18 E								
All of Section	17	13 S	18 E								
All of Section	18	13 S	18 E								
All of Section	19	13 S	18 E								

33

RANGE No. 188, DISTRICT OF New Orleans

DATE OF SALE	NUMBER OF BAGGERS AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
				Volume	Page
March 2 1889 Approved by Landing Intention May 6 1889					
11	21	21	21	21	21
12	22	22	22	22	22
13	23	23	23	23	23
14	24	24	24	24	24
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18	28	28	28	28	28
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22	32	32	32	32	32
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24	34	34	34	34	34
25	35	35	35	35	35
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29	39	39	39	39	39
30	40	40	40	40	40
31	41	41	41	41	41
32	42	42	42	42	42
33	43	43	43	43	43
34	44	44	44	44	44
35	45	45	45	45	45
36	46	46	46	46	46
37	47	47	47	47	47
38	48	48	48	48	48
39	49	49	49	49	49
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41	51	51	51	51	51
42	52	52	52	52	52
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69	79	79	79	79	79
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72	82	82	82	82	82
73	83	83	83	83	83
74	84	84	84	84	84
75	85	85	85	85	85
76	86	86	86	86	86
77	87	87	87	87	87
78	88	88	88	88	88
79	89	89	89	89	89
80	90	90	90	90	90
81	91	91	91	91	91
82	92	92	92	92	92
83	93	93	93	93	93
84	94	94	94	94	94
85	95	95	95	95	95
86	96	96	96	96	96
87	97	97	97	97	97
88	98	98	98	98	98
89	99	99	99	99	99
90	100	100	100	100	100

TOWNSHIP No. 18 S₂

DESCRIPTION OF TRACT.				CONTENTS.		RATES PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.	
PART OF SECTION.	SECTION.	TOWNSHIP.	RANGE.	ACRES.	1000ths.	Dollars.	Cents.	Dollars.	Cents.		
All of Section	19	18 S	17 E	relinquished by State under Act							
All of Section	20	18 S	17 E			"	"	"	"	"	
All of Section	21	18 S	17 E			"	"	"	"	"	
All of Section	22	18 S	17 E			"	"	"	"	"	
All of Section	23	18 S	17 E			"	"	"	"	"	
All of Section	24	18 S	17 E			"	"	"	"	"	
All of Section	25	18 S	17 E			"	"	"	"	"	
All of Section	26	18 S	17 E			"	"	"	"	"	
All of Section	27	18 S	17 E			"	"	"	"	"	
All of Section	28	18 S	17 E			"	"	"	"	"	
All of Section	29	18 S	17 E			"	"	"	"	"	
All of Section	30	18 S	17 E			"	"	"	"	"	
All of Section	31	18 S	17 E			"	"	"	"	"	
All of Section	32	18 S	17 E			"	"	"	"	"	
All of Section	33	18 S	17 E			"	"	"	"	"	
All of Section	34	18 S	17 E			"	"	"	"	"	
All of Section	35	18 S	17 E			"	"	"	"	"	
All of Section	36	18 S	17 E			"	"	"	"	"	

RANGE No. 178, DISTRICT OF New Orleans

DATE OF SALE		NUMBER OF ACREAGE AND CHARACTER OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
Volume	Page					
March 2-1849 - Approved by Secretary Interior May 11-1852						
1	0	0	0	0	0	0
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	0	0	0	0	0	0
5	0	0	0	0	0	0
6	0	0	0	0	0	0
7	0	0	0	0	0	0
8	0	0	0	0	0	0
9	0	0	0	0	0	0
10	0	0	0	0	0	0
11	0	0	0	0	0	0
12	0	0	0	0	0	0
13	0	0	0	0	0	0
14	0	0	0	0	0	0
15	0	0	0	0	0	0
16	0	0	0	0	0	0
17	0	0	0	0	0	0
18	0	0	0	0	0	0
19	0	0	0	0	0	0
20	0	0	0	0	0	0
21	0	0	0	0	0	0
22	0	0	0	0	0	0
23	0	0	0	0	0	0
24	0	0	0	0	0	0
25	0	0	0	0	0	0
26	0	0	0	0	0	0
27	0	0	0	0	0	0
28	0	0	0	0	0	0
29	0	0	0	0	0	0
30	0	0	0	0	0	0
31	0	0	0	0	0	0
32	0	0	0	0	0	0
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35	0	0	0	0	0	0
36	0	0	0	0	0	0
37	0	0	0	0	0	0
38	0	0	0	0	0	0
39	0	0	0	0	0	0
40	0	0	0	0	0	0
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42	0	0	0	0	0	0
43	0	0	0	0	0	0
44	0	0	0	0	0	0
45	0	0	0	0	0	0
46	0	0	0	0	0	0
47	0	0	0	0	0	0
48	0	0	0	0	0	0
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65	0	0	0	0	0	0
66	0	0	0	0	0	0
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69	0	0	0	0	0	0
70	0	0	0	0	0	0
71	0	0	0	0	0	0
72	0	0	0	0	0	0
73	0	0	0	0	0	0
74	0	0	0	0	0	0
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76	0	0	0	0	0	0
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79	0	0	0	0	0	0
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87	0	0	0	0	0	0
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89	0	0	0	0	0	0
90	0	0	0	0	0	0
91	0	0	0	0	0	0
92	0	0	0	0	0	0
93	0	0	0	0	0	0
94	0	0	0	0	0	0
95	0	0	0	0	0	0
96	0	0	0	0	0	0
97	0	0	0	0	0	0
98	0	0	0	0	0	0
99	0	0	0	0	0	0
100	0	0	0	0	0	0

TOWNSHIP No. 11 South

DESCRIPTION OF TRACT				Ownership		Rate per Acre		Purchase Money		NAME OF THE PURCHASER
Part of Section	Section	Township	Range	Acres	Other	Dollars	Cents	Dollars	Cents	
All of Section 1	1	11S	19E							Subdivided by State under Act No.
All of Section 11	11	11S	19E							
All of Section 12	12	11S	19E							
All of Section 13	13	11S	19E							
All of Section 14	14	11S	19E							
All of Section 15	15	11S	19E							
All of Section 20	20	11S	19E							
All of Section 21	21	11S	19E							
All of Section 22	22	11S	19E							
All of Section 23	23	11S	19E							
All of Section 24	24	11S	19E							
All of Section 25	25	11S	19E							
All of Section 26	26	11S	19E							
All of Section 27	27	11S	19E							
All of Section 28	28	11S	19E							
All of Section 29	29	11S	19E							
All of Section 30	30	11S	19E							

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[illegible]

[illegible]

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RANGE NO.	DATE OF SALE	NAME OF PURCHASER	ACRES PURCHASED	DATE OF ENTRY	NAME OF ENTRY	DATE OF ENTRY	NAME OF ENTRY	TOTAL ACRES	
								Acres	Feet
1	1880	John A. Smith	100	1880	John A. Smith	1880	John A. Smith	100	1880
2	1881	John A. Smith	100	1881	John A. Smith	1881	John A. Smith	100	1881
3	1882	John A. Smith	100	1882	John A. Smith	1882	John A. Smith	100	1882
4	1883	John A. Smith	100	1883	John A. Smith	1883	John A. Smith	100	1883
5	1884	John A. Smith	100	1884	John A. Smith	1884	John A. Smith	100	1884
6	1885	John A. Smith	100	1885	John A. Smith	1885	John A. Smith	100	1885
7	1886	John A. Smith	100	1886	John A. Smith	1886	John A. Smith	100	1886
8	1887	John A. Smith	100	1887	John A. Smith	1887	John A. Smith	100	1887
9	1888	John A. Smith	100	1888	John A. Smith	1888	John A. Smith	100	1888
10	1889	John A. Smith	100	1889	John A. Smith	1889	John A. Smith	100	1889

SECTION		DATE		TIME		PLACE		REMARKS	
NO.	NAME	DATE	TIME	PLACE	REMARKS	DATE	TIME	PLACE	REMARKS
1	all of section	1	12:45	all of section	all of section				
2	all of section	2	12:45						
3	all of section	3	12:45						
4	all of section	4	12:45						
5	all of section	5	12:45						
6	all of section	6	12:45						
7	all of section	7	12:45						
8	all of section	8	12:45						
9	all of section	9	12:45						
10	all of section	10	12:45						
11	all of section	11	12:45						
12	all of section	12	12:45						
13	all of section	13	12:45						
14	all of section	14	12:45						
15	all of section	15	12:45						
16	all of section	16	12:45						
17	all of section	17	12:45						
18	all of section	18	12:45						
19	all of section	19	12:45						
20	all of section	20	12:45						

11

RANGE No. 9, DISTRICT OF Col. *Missouri*

37

RANGE	DATE OF BULL			D. WHICH COUNTRY	DATE OF PATENT			WHOLE NUMBER	
	Year	Month	Day		Year	Month	Day	Year	Page
11	1880	1	1	1	1880	1	1	1	1
	1880	2	2	2	1880	2	2	2	2
	1880	3	3	3	1880	3	3	3	3
	1880	4	4	4	1880	4	4	4	4
	1880	5	5	5	1880	5	5	5	5
	1880	6	6	6	1880	6	6	6	6
	1880	7	7	7	1880	7	7	7	7
	1880	8	8	8	1880	8	8	8	8
	1880	9	9	9	1880	9	9	9	9
	1880	10	10	10	1880	10	10	10	10
	1880	11	11	11	1880	11	11	11	11
	1880	12	12	12	1880	12	12	12	12
	1881	1	1	1	1881	1	1	1	1
	1881	2	2	2	1881	2	2	2	2
	1881	3	3	3	1881	3	3	3	3
	1881	4	4	4	1881	4	4	4	4
	1881	5	5	5	1881	5	5	5	5
	1881	6	6	6	1881	6	6	6	6
	1881	7	7	7	1881	7	7	7	7
	1881	8	8	8	1881	8	8	8	8
	1881	9	9	9	1881	9	9	9	9
	1881	10	10	10	1881	10	10	10	10
	1881	11	11	11	1881	11	11	11	11
	1881	12	12	12	1881	12	12	12	12
	1882	1	1	1	1882	1	1	1	1
	1882	2	2	2	1882	2	2	2	2
	1882	3	3	3	1882	3	3	3	3
	1882	4	4	4	1882	4	4	4	4
	1882	5	5	5	1882	5	5	5	5
	1882	6	6	6	1882	6	6	6	6
	1882	7	7	7	1882	7	7	7	7
	1882	8	8	8	1882	8	8	8	8
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	1882	12	12	12	1882	12	12	12	12
	1883	1	1	1	1883	1	1	1	1
	1883	2	2	2	1883	2	2	2	2
	1883	3	3	3	1883	3	3	3	3
	1883	4	4	4	1883	4	4	4	4
	1883	5	5	5	1883	5	5	5	5
	1883	6	6	6	1883	6	6	6	6
	1883	7	7	7	1883	7	7	7	7
	1883	8	8	8	1883	8	8	8	8
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	1883	10	10	10	1883	10	10	10	10
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	1883	12	12	12	1883	12	12	12	12
	1884	1	1	1	1884	1	1	1	1
	1884	2	2	2	1884	2	2	2	2
	1884	3	3	3	1884	3	3	3	3
	1884	4	4	4	1884	4	4	4	4
	1884	5	5	5	1884	5	5	5	5
	1884	6	6	6	1884	6	6	6	6
	1884	7	7	7	1884	7	7	7	7
	1884	8	8	8	1884	8	8	8	8
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	1884	12	12	12	1884	12	12	12	12
	1885	1	1	1	1885	1	1	1	1
	1885	2	2	2	1885	2	2	2	2
	1885	3	3	3	1885	3	3	3	3
	1885	4	4	4	1885	4	4	4	4
	1885	5	5	5	1885	5	5	5	5
	1885	6	6	6	1885	6	6	6	6
	1885	7	7	7	1885	7	7	7	7
	1885	8	8	8	1885	8	8	8	8
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	1885	12	12	12	1885	12	12	12	12
	1886	1	1	1	1886	1	1	1	1
	1886	2	2	2	1886	2	2	2	2
	1886	3	3	3	1886	3	3	3	3
	1886	4	4	4	1886	4	4	4	4
	1886	5	5	5	1886	5	5	5	5
	1886	6	6	6	1886	6	6	6	6
	1886	7	7	7	1886	7	7	7	7
	1886	8	8	8	1886	8	8	8	8
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	1886	12	12	12	1886	12	12	12	12
	1887	1	1	1	1887	1	1	1	1
	1887	2	2	2	1887	2	2	2	2
	1887	3	3	3	1887	3	3	3	3
	1887	4	4	4	1887	4	4	4	4
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	1887	12	12	12	1887	12	12	12	12
	1888	1	1	1	1888	1	1	1	1
	1888	2	2	2	1888	2	2	2	2
	1888	3	3	3	1888	3	3	3	3
	1888	4	4	4	1888	4	4	4	4
	1888	5	5	5	1888	5	5	5	5
	1888	6	6	6	1888	6	6	6	6
	1888	7	7	7	1888	7	7	7	7
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	1888	12	12	12	1888	12	12	12	12
	1889	1	1	1	1889	1	1	1	1
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	1889	3	3	3	1889	3	3	3	3
	1889	4	4	4	1889	4	4	4	4
	1889	5	5	5	1889	5	5	5	5
	1889	6	6	6	1889	6	6	6	6
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	1889	8	8	8	1889	8	8	8	8
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	1889	12	12	12	1889	12	12	12	12
	1890	1	1	1	1890	1	1	1	1
	1890	2	2	2	1890	2	2	2	2
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	1890	4	4	4	1890	4	4	4	4
	1890	5	5	5	1890	5	5	5	5
	1890	6	6	6	1890	6	6	6	6
	1890	7	7	7	1890	7	7	7	7
	1890	8	8	8	1890	8	8	8	8
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	1890	12	12	12	1890	12	12	12	12
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	1891	2	2	2	1891	2	2	2	2
	1891	3	3	3	1891	3	3	3	3
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	1891	5	5	5	1891	5	5	5	5
	1891	6	6	6	1891	6	6	6	6
	1891	7	7	7	1891	7	7	7	7
	1891	8	8	8	1891	8	8	8	8
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	1891	12	12	12	1891	12	12	12	12
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	1892	2	2	2	1892	2	2	2	2
	1892	3	3	3	1892	3	3	3	3
	1892	4	4	4	1892	4	4	4	4
	1892	5	5	5	1892	5	5	5	5
	1892	6	6	6	1892	6	6	6	6
	1892	7	7	7	1892	7	7	7	7
	1892	8	8	8	1892	8	8	8	8
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	1892	12	12	12	1892	12	12	12	12
	1893	1	1	1	1893	1	1	1	1
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	1893	6	6	6	1893	6	6	6	6
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	1893	8	8	8	1893	8	8	8	8
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	1893	10	10	10	1893	10	10	10	10
	1893	11	11	11	1893	11	11	11	11
	1893	12	12	12</					

TOWNSHIP No. *12 South*

DESCRIPTION OF TRACT

PART OF SECTION

Section

Township

Range

CONTENTS

Acres

Molls

RATE PER ACRE

Dollars

Cents

PURCHASE MONEY

Dollars

Cents

NAME OF THE PURCHASER

Date

PART OF SECTION	Section	Township	Range	Acres	Molls	Rate per Acre Dollars Cents	Purchase Money Dollars Cents	Name of the Purchaser	Date
All of Section	22	12S	19S					Selected by State under Act	June
All of Section	23	12S	19S					" "	" "
All of Section	24	12S	19S					" "	" "
All of Section	25	12S	19S					" "	" "
All of Section	26	12S	19S					" "	" "
All of Section	27	12S	19S					" "	" "
All of Section	28	12S	19S					" "	" "
All of Section	29	12S	19S					" "	" "
All of Section	30	12S	19S					" "	" "
All of Section	31	12S	19S					" "	" "
All of Section	32	12S	19S					" "	" "
All of Section	33	12S	19S					" "	" "
All of Section	34	12S	19S					" "	" "
All of Section	35	12S	19S					" "	" "
All of Section	36	12S	19S					" "	" "

TOWNSHIP No. 13 South

DESCRIPTION OF TRACT				CONTENTS	RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER
Part of Section	Section	Township	Range	Acres	100ths	Dollars	Cents	Dollars	Cents
All of Section	1	13S	19E	Selected by State under act -					
All of Section	2	13S	19E	"	"	"	"	"	"
All of Section	3	13S	19E	"	"	"	"	"	"
All of Section	4	13S	19E	"	"	"	"	"	"
All of Section	5	13S	19E	"	"	"	"	"	"
All of Section	6	13S	19E	"	"	"	"	"	"
All of Section	7	13S	19E	"	"	"	"	"	"
All of Section	8	13S	19E	"	"	"	"	"	"
All of Section	9	13S	19E	"	"	"	"	"	"
All of Section	10	13S	19E	"	"	"	"	"	"
All of Section	11	13S	19E	"	"	"	"	"	"
All of Section	12	13S	19E	"	"	"	"	"	"
All of Section	13	13S	19E	"	"	"	"	"	"
All of Section	14	13S	19E	"	"	"	"	"	"
All of Section	15	13S	19E	"	"	"	"	"	"
All of Section	17	13S	19E	"	"	"	"	"	"
All of Section	11	13S	19E	"	"	"	"	"	"

RANGE No. *19* *East*, DISTRICT OF *New Orleans*

39

DISTRICT OF New Orleans									
DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE		TO WHOM PATENTED	DATE OF PATENT		WHERE RECORDED			
						Volume	Page		
March 2-1849. Approved by Landry Interim May 6-1852-									
1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2
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99	99	99	99	99	99	99	99	99	99
100	100	100	100	100	100	100	100	100	100

TOWNSHIP No. 13 South

DESCRIPTION OF TRACT				CONTENTS	RATE PER ACRE		PAYMENT MONEY		NAME OF THE PURCHASER	
PART OF SECTION	SECTION	TOWNSHIP	RANGE		ACRES	1000ths	Dollars	Cents		Dollars
All of Section 19	19	13S	19E	Selected						by State under Act March
All of Section 20	20	13S	19E	"		"	"	"	"	"
All of Section 21	21	13S	19E	"		"	"	"	"	"
All of Section 22	22	13S	19E	"		"	"	"	"	"
All of Section 25	25	13S	19E	"		"	"	"	"	"
All of Section 26	26	13S	19E	"		"	"	"	"	"
All of Section 28	28	13S	19E	"		"	"	"	"	"
All of Section 29	29	13S	19E	"		"	"	"	"	"
All of Section 30	30	13S	19E	"		"	"	"	"	"
All of Section 31	31	13S	19E	"		"	"	"	"	"
All of Section 32	32	13S	19E	"		"	"	"	"	"
All of Section 33	33	13S	19E	"		"	"	"	"	"
All of Section 34	34	13S	19E	"		"	"	"	"	"
All of Section 35	35	13S	19E	"		"	"	"	"	"
All of Section 36	36	13S	19E	"		"	"	"	"	"

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONTENTS.		RATS PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.	
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.		
All of section	2	10 S	20 E	Selected by State under Act -							
All of section	3	10 S	20 E	
All of section	4	10 S	20 E	
All of section	5	10 S	20 E	
All of section	6	10 S	20 E	
All of section	7	10 S	20 E	
All of section	8	10 S	20 E	
All of section	9	10 S	20 E	
All of section	10	10 S	20 E	
All of section	11	10 S	20 E	
All of section	12	10 S	20 E	
All of section	13	10 S	20 E	
All of section	14	10 S	20 E	
All of section	15	10 S	20 E	
All of section	17	10 S	20 E	
All of section	18	10 S	20 E	
All of section	19	10 S	20 E	
All of section	20	10 S	20 E	

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONTENTS		RATE PER A. C.		PURCHASE MONEY		NAME OF THE PURCHASER.	
Part of Section.	Section.	Township.	Range.	Acres.	Loths.	Dollars.	Cents.	Dollars.	Cents.		
All of Section	21	10 S	20 E	Selected by State under Act-							
All of Section	22	10 S	20 E	"	"	"	"	"	"	"	
All of Section	23	10 S	20 E	"	"	"	"	"	"	"	
All of Section	24	10 S	20 E	"	"	"	"	"	"	"	
All of Section	25	10 S	20 E	"	"	"	"	"	"	"	
All of Section	26	10 S	20 E	"	"	"	"	"	"	"	
All of Section	27	10 S	20 E	"	"	"	"	"	"	"	
All of Section	28	10 S	20 E	"	"	"	"	"	"	"	
All of Section	29	10 S	20 E	"	"	"	"	"	"	"	
All of Section	30	10 S	20 E	"	"	"	"	"	"	"	
All of Section	31	10 S	20 E	"	"	"	"	"	"	"	
All of Section	32	10 S	20 E	"	"	"	"	"	"	"	
All of Section	33	10 S	20 E	"	"	"	"	"	"	"	
All of Section	34	10 S	20 E	"	"	"	"	"	"	"	

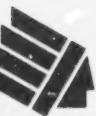
TOWNSHIP No. 11, Sec. 6, 1896

SECTION OF THE				CONCRETE		BASE FOR A.C.		FINISHED DRIVE		NAME OF THE FIRM
TYPE OF DRIVE	SPACES	LENGTH	DEPTH	AREA	CUBIC	DOLLARS	CENTS	DOLLARS	CENTS	
All of Section 4	4	11.5	2.0	Calculated by State						consider it
All of Section 5	5	11.5	2.0							
All of Section 6	6	11.5	2.0							
All of Section 7	7	11.5	2.0							
All of Section 8	8	11.5	2.0							
All of Section 9	9	11.5	2.0							
All of Section 10	10	11.5	2.0							
All of Section 11	11	11.5	2.0							
All of Section 12	12	11.5	2.0							
All of Section 13	13	11.5	2.0							
All of Section 14	14	11.5	2.0							
All of Section 15	15	11.5	2.0							
All of Section 16	16	11.5	2.0							
All of Section 17	17	11.5	2.0							
All of Section 18	18	11.5	2.0							
All of Section 19	19	11.5	2.0							
All of Section 20	20	11.5	2.0							
All of Section 21	21	11.5	2.0							
All of Section 22	22	11.5	2.0							
All of Section 23	23	11.5	2.0							
All of Section 24	24	11.5	2.0							
All of Section 25	25	11.5	2.0							
All of Section 26	26	11.5	2.0							
All of Section 27	27	11.5	2.0							
All of Section 28	28	11.5	2.0							
All of Section 29	29	11.5	2.0							
All of Section 30	30	11.5	2.0							

TOWNSHIP No. 12 South

SECTIONING OF TOWNSHIP				TOWNSHIP NO. 2 South		RANGE 12 East		TOWNSHIP MONEY		NAME OF THE PURCHASER
SECTION	TOWNSHIP	RANGE	SECTION	TOWNSHIP	RANGE	SECTION	TOWNSHIP	SECTION	TOWNSHIP	
All of Section 1	12 S	20 E	1	12 S	20 E	1	12 S	20 E	1	Collected by State Auditor H.C. H.
All of Section 2	12 S	20 E	2	12 S	20 E	2	12 S	20 E	2	
All of Section 3	12 S	20 E	3	12 S	20 E	3	12 S	20 E	3	
All of Section 4	12 S	20 E	4	12 S	20 E	4	12 S	20 E	4	
All of Section 5	12 S	20 E	5	12 S	20 E	5	12 S	20 E	5	
All of Section 6	12 S	20 E	6	12 S	20 E	6	12 S	20 E	6	
All of Section 7	12 S	20 E	7	12 S	20 E	7	12 S	20 E	7	
All of Section 8	12 S	20 E	8	12 S	20 E	8	12 S	20 E	8	
All of Section 9	12 S	20 E	9	12 S	20 E	9	12 S	20 E	9	
All of Section 10	12 S	20 E	10	12 S	20 E	10	12 S	20 E	10	
All of Section 11	12 S	20 E	11	12 S	20 E	11	12 S	20 E	11	
All of Section 12	12 S	20 E	12	12 S	20 E	12	12 S	20 E	12	
All of Section 13	12 S	20 E	13	12 S	20 E	13	12 S	20 E	13	
All of Section 14	12 S	20 E	14	12 S	20 E	14	12 S	20 E	14	
All of Section 15	12 S	20 E	15	12 S	20 E	15	12 S	20 E	15	
All of Section 16	12 S	20 E	16	12 S	20 E	16	12 S	20 E	16	
All of Section 17	12 S	20 E	17	12 S	20 E	17	12 S	20 E	17	
All of Section 18	12 S	20 E	18	12 S	20 E	18	12 S	20 E	18	
All of Section 19	12 S	20 E	19	12 S	20 E	19	12 S	20 E	19	
All of Section 20	12 S	20 E	20	12 S	20 E	20	12 S	20 E	20	
All of Section 21	12 S	20 E	21	12 S	20 E	21	12 S	20 E	21	
All of Section 22	12 S	20 E	22	12 S	20 E	22	12 S	20 E	22	
All of Section 23	12 S	20 E	23	12 S	20 E	23	12 S	20 E	23	

RANGE No. 4, DISTRICT OF New Mexico, S. P. D. No. 100



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A Division of Information Handling Services

5500 S. VALENTIA WAY

ENGLEWOOD, COLORADO TEL. NO. 303-771-2600

CARD 2

Sept 26, 1902
 I am hereby certifying that the above and foregoing
 as a true and correct copy of the Roll Books
 and Records of this Office.
 Walter L. Coby, Auditor
 Register

66 [Endorsed:] Supreme Court U. S. October term, 1902.
Term No. 12, origl. State of Louisiana, complainant, vs.
State of Mississippi. Exhibit G to bill of complaint. Filed Oct. 27,
1902.

67 EXHIBIT II TO BILL OF COMPLAINT.

STATE OF LOUISIANA:

Patent No. 194.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell, of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 140 dated 20, March, 1867, the following described swamp lands subject to tidal overflow, to wit:—

The fractional sections numbers 23, 24, 25, and 26, in township 10 S. of range 20 E., in the southeastern land district of Louisiana, St. Bernard parish, containing four hundred and sixty-eight 48/100 acres, according to the official plat of the survey of said lands in the State land office,—468.48

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto th- said Richard Pindell of Orleans, and to his heirs, the above described land: To have and to hold the same, together with all the rights titles and privileges thereunto belonging unto the said Richard Pindell, his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States, the ninety-first.

By the governor.

(Signed)
[L. S.]

J. MADISON WELLS.
AD. DUPRE, Register.

True record of the original, this day delivered to patentee,

(Signed)

AD. DUPRE, Register.

68 STATE OF LOUISIANA, }
City of Baton Rouge, State Land Office. }

I, James M. Smith, register of the State land office, State of Louisiana, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 194 as recorded in

Record of Patents, vol. No. 15, page 91, on file in the State land office.

Given under my hand and seal of office in the city of Baton Rouge, Louisiana, on this, the twenty-sixth day of September, A. D. nineteen hundred and two.

JAS. M. SMITH, Register.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12, orig'l State of Louisiana, complainant, *vs.* State of Mississippi Exhibit "H" to bill of complaint. Filed Oct. 27, 1902.

69

EXHIBIT I TO BILL OF COMPLAINT.

STATE OF LOUISIANA :

Patent No. 195.

To all to whom these presents shall come, Greeting :

Whereas, Richard Pindell, of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 141, dated 20th. March, 1867, the following described swamp lands subject to tidal overflow, to wit :—

The fractional sections Nos. thirty-three and 34 in township 10 S. of range 20 E., in the southeastern land district of Louisiana, parish of St. Bernard, containing five hundred and sixty-nine $72/100$ acres, according to the official plat of the survey of said lands in the State land office, 569.72.

Now know ye, that the State of Louisiana, in consideration of the premises, and in conformity with law, in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Richard Pindell of Orleans, and to his heirs, the above described land : To have and to hold the same, together with all the rights, titles and privileges thereunto belonging, unto the said Richard Pindell, his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States, the ninety-first.

By the governor.

(Signed)

[L. S.]

J. MADISON WELLS.

AD. DUPRE, Register.

True record of the original, this day delivered to patentee,

(Signed)

AD. DUPRE, Register.

70

STATE OF LOUISIANA, }
 City of Baton Rouge, State Land Office. }

I, James M. Smith, register of the State land office, State of Louisiana, do hereby certify that the within and foregoing is a true and correct copy of the record of patent No. 195, of record in Record of Patents, vol. No. 15, page 94, on file in the State land office.

Given under my hand and seal of office, in the city of Baton Rouge, Louisiana, on this the twenty-sixth day of September, A. D. nineteen hundred and two.

JAS. M. SMITH, Register.

(Endorsed :) Supreme Court U. S. October term, 1902 Term No. 12 orig'l State of Louisiana, complainant, vs. State of Mississippi Exhibit "I" to bill of complaint. Filed Oct. 27, 1902.

71

EXHIBIT J TO BILL OF COMPLAINT.

STATE OF LOUISIANA :

Patent No. 196.

To all to whom these presents shall come, Greeting :

Whereas, Richard Pindell of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 142, dated March 20th. 1867, the following described swamp lands subject to tidal overflow, towit :—The fractional sections Nos. 27, 28 & 32 in township No. 10 S. of range No. 20 E., in the southeastern land district of La., St. Bernard parish, containing three hundred and eighty 40/100 acres, according to the official plat of the survey of said lands in the State land office, 380.40.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Richard Pindell of Orleans, and to his heirs, the above described land : To have and to hold the same, together with all the right titles and privileges thereunto belonging, unto the said Richard Pindell, his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty seven, and of the Independence of the United States, the ninety first.

By the governor.

(Signed)

J. MADISON WELLS.
 AD. DUPRE, Register.

[L. s.]

4—11

True record of the original, this day delivered to patentee.

(Signed)

AD. DUPRE, Register.

72

STATE OF LOUISIANA,
City of Baton Rouge, State Land Office. }

I, James M. Smith, register of the State land office, State of Louisiana, do hereby certify that the withing and foregoing is a true and correct copy of the record of patent No. 196 of record in Record of Patents vol. 15, page 95, on file in the State land office.

Given under my hand and seal of office, in the city of Baton Rouge, Louisiana, on this the twenty-sixth day of September, A. D. nineteen hundred and two.

JAS. M. SMITH, Register.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12, original. State of Louisiana, complainant, v. State of Mississippi. Exhibit "J" to bill of complaint. Filed Oct. 27, 1902.

73

EXHIBIT K TO BILL OF COMPLAINT.

184.

April 18th, 1867.

Sale of Lands—Richard Pindell to Henry J. Leovy, Esq.

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known, that this day, before me, George William Christy, a notary public, in and for the city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, personally came and appeared: Richard Pindell of this city who declared; that for the consideration and on the terms and conditions herein-after set forth, he does by these presents, grant, bargain, sell, convey, assign and set over with all legal warranties unto Henry Jefferson Leovy Esq. also of this city, present, accepting and purchasing for himself, his heirs and assigns and acknowledging delivery and possession thereof all and singular the following described property situated in the south eastern land district of Louisiana, in the parish of St. Bernard, being swamp lands subject to tidal overflow and embracing the whole of the island known as "Isle a Pitre" and other lands, viz:

First. The fractional sections numbers, "twenty three" "twenty four," "twenty five" and "twenty six" in township number "ten" south of range "twenty" east, containing four hundred and sixty-eight 78/100 acres.

Second. The fractional sections "twenty three" and "thirty four," in township number "ten" south of range "twenty" east containing five hundred and sixty-nine $72/100$ acres.

Third. The fractional sections numbers, "twenty seven" "twenty eight" and "thirty two" in township No. "ten" south of range No. "twenty" east containing three hundred and eighty $40/100$ acres:—all of which said above described and within conveyed land was acquired by the said vendors by purchase from the State of Louisiana as per patents Nos. 194, 195 and 196, dated 20th March 1867.

And here the said purchaser declared that he dispensed with the production of a mortgage certificate from the recorder of mortgages for the said parish of St. Bernard, showing the mortgages if any and to be annexed to this act as required by article "3328" of the Civil Code of this State.

The U. S. revenue stamp of one dollar and fifty cents required for this act, has been hereunto duly affixed and cancelled.

To have and to hold, the said land unto the said purchaser his heirs and assigns, to their proper use and behoof, forever; and the said vendor for himself & heirs the said land to the said purchaser his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons, whomsoever, by the presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor or against the vendors of his vendor fully authorizing the said purchaser to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the price and sum of fifteen hundred dollars (\$1500) which has been paid in cash by the said purchaser at the execution of these presents the receipt of which is hereby acknowledged by the said vendor and acquittance therefor granted.

And now personally came and intervened in these presents, Mistress Anna Monroe of lawful age and wife of the said vendor, who did declare unto me, notary that it is her wish and intention, to release in favor of said purchaser, the property herein described from the matrimonial, dotal, paraphernal and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon, I, the said notary, did inform, the said wife, verbally, apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law, a legal mortgage on the property of her said husband:—First. For the restitution of her dowry, and for the re-investment of her dotal property, sold by her husband, and which she brought in marriage reckoning from the celebration of the marriage. Secondly: For the restitution and re-investment of the dotal property

by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. Thirdly: For nuptial presents. Fourthly: For debts by her contracted with her said husband, and fifthly: For the amount of her paraphernal property alienated by her and received by her said husband or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal and other rights and privileges thus secured to her by law, on the property of her said husband, and that availing herself of the rights secured to her by the second section of an act passed by the legislature of this State, authorizing wives to make valid renunciations, &c., approved on the 27th day of March 1835; she nevertheless, did persist in her intention of renouncing, not only all the rights, claims and privileges hereinbefore enumerated and described, but all others of any kind whatever to which she is or may be entitled by any laws, now or heretofore in force in the State of Louisiana.

And the said husband being now present aiding and authorizing his said wife, in these presents, she the said wife, did again declare, that she did, and doth, hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal and other rights, claims and privileges, in favor of the said purchaser, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office, at the city of New Orleans, aforesaid in the presence of Charles C. Van Benthuyssen & Isaac N. Mayronne witnesses, of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said notary, on this eighteenth day of April one thousand eight hundred and sixty-seven.

R. PINDELL
ANNA PINDELL
HENRY J. LEOVY.

CHAS. C. VEN BENTHUYSEN.
I. N. MAYRONNE.

GEO. W. CHRISTY, Not. Pub.

NEW ORLEANS, LOUISIANA, October 6, 1902.

I, the undersigned, Peter Stiff, custodian of notarial records in and for the parish of Orleans, State of La., do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and seal this sixth day of October, 1902.

At New Orleans, La.

[SEAL.]

PETER STIFF,
Custodian Notarial Records.

(Endorsed:) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. State of Louisiana, complainant, vs. State of Mississippi. Exhibit "K" to bill of complaint. Filed Oct. 27, 1902.

77 EXHIBIT L TO BILL OF COMPLAINT.

Eugene Joubert, Printer, 627 Gravier St., N. O.

No. —.

March 2nd, 1892.

Sale of Land by Henry J. Leovy to Joseph C. Gilmore.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans, }
City of New Orleans. }

Be it known, that on this second day of the month of March in the year one thousand eight hundred and ninety-two and of the Independence of the United States of America, the one hundred and sixteenth, before me, Theodore Cotonio, a notary public, duly commissioned and qualified, in and for the parish of Orleans, State of Louisiana, aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned. Personally came and appeared: *Henry Jefferson Leovy Esq.*, of lawful age and a resident of this city, *who declared* that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver, with all legal warranties up to the amount of the price herein paid; and with full substitution and subrogation in and to all the rights and actions in warranty, which he has or may have against all preceding owners and vendors, unto, *Joseph Clohacy Gilmore Esq.*, also of lawful age and a resident of this city; here present, and accepting, purchasing for himself, his heirs and assigns, and acknowledging due delivery and possession thereof, the following described property, to wit:

Certain lands situated in the south eastern land district of Louisiana in the parish of St. Bernard, embracing the whole of the island known as "Isle au Pitre" and other lands, viz:

78 First. The fractional sections, numbers twenty-three, twenty-four, twenty-five and twenty-six; in township number ten, south of range twenty east, containing four hundred and sixty-eight 78 100 acres.

Second. The fractional sections, thirty-three, and thirty-four, in township number ten, south of range twenty east; containing five hundred and sixty-nine 72 / 100 acres.

Third. The fractional sections, numbers twenty-seven, twenty-eight and thirty-two, in township number ten, south of range number twenty east, containing three hundred and eighty 40 / 100 acres.

Together with all rights of accretion, rights, ways, advantages and appurtenances thereunto belonging or in anywise appertaining; the whole according to a copy of plan, duly certified by A. Dupre, register of the land office and by A. Landry and Wm. J. McCullogh, surveyors general of Louisiana, annexed to this act for reference, and duly paraphed "*Ne varietur*" by me notary for identification herewith.

Which said above described property and conveyed lands were acquired by the present vendor from Richard Pindell, by act passed before George W. Christy, late a notary in this city, under date of April, eighteenth, 1867, by purchase; and by said Pindell acquired by purchase from the State of Louisiana, as per patents Nos. 194, 195 and 196, dated March 20th 1867 as in said act set forth.

To have and to hold the above described lands and property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of nine hundred and fifty dollars (\$950.00) cash, which the said purchaser has paid in ready and current money, to the said vendor, who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

And the said vendor hereupon declared that there are no taxes due or exigible upon said lands and property and the same to be free and clear of all liens, mortgages, privileges or other incumbrances and all taxes, claims, liens and privileges therefor; of which declaration the present purchaser expresses himself satisfied and dispense with the production of mortgage certificates from the recorder of mortgages in and for the parish of St. Bernard, and
79 all other certificates required by law, herein agreeing to hold me, notary, harmless for non production thereof.

Thus done and passed, in my office, at the city of New Orleans on the day, month and year, herein first above written, in the presence of Messieurs Edward Eugene O'Brien and Charles Kummel, both of this city, competent witnesses, who hereunto signed their names with the said appearers and me, notary, after reading of the whole.

(Original signed)

HENRY J. LEOVY.
JOSEPH C. GILMORE.

E. E. O'BRIEN.
CHAS. KUMMEL.

THEO. COTONIO,
Not. Pub. [SEAL.]

A true copy of the original.

Registered in the conveyance office, Book, 18, folio, 47 *et seq.* of the parish of St. Bernard, State of Louisiana.

THEO. COTONIO, Not. Pub.

(Endorsed :) New Orleans, March 2nd, 1892 (C-o-p-y) Sale of land by Henry J. Leovy to Joseph C. Gilmore Registered in con-

veyance office, Book, 18, folio, 47 *et seq.*, of the parish of St. Bernard, State of Louisiana, Theo. Cotonio, not. pub. Exhibit L.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12 orig'l State of Louisiana complainant, *vs.* State of Mississippi. Exhibit "L" to bill of complaint. Filed Oct. 27, 1902

80

EXHIBIT M TO BILL OF COMPLAINT.

Eugene Joubert, Printer, 627 Gravier St., N. O.

No. —.

March 2nd, 1892.

Sale of Land by Henry J. Leovy to Joseph C. Gilmore.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans, }
City of New Orleans. }

Be it known, that on this second day of the month of March in the year one thousand eight hundred and ninety-two and of the Independence of the United States of America, the one hundred and sixteenth, before me, Theodore Cotonio, a notary public, duly commissioned and qualified, in and for the parish of Orleans, State of Louisiana, aforesaid, therein residing and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared: Henry Jefferson Leovy Esq., of lawful age and a resident of this city, who declared that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver, with all legal warranties, up to the amount of the price herein paid; and with full substitution and subrogation in and to all the rights and actions in warranty, which he has or may have against all preceding owners and vendors, unto, Joseph Clohecy Gilmore, Esq., also of lawful age and a resident of this city; here present, and accepting, purchasing for himself, his heirs and assigns and acknowledging due delivery and possession thereof, the following described property, to wit:

Certain lands situated in the south eastern land district of Louisiana in the parish of St. Bernard, adjacent to "Isle au Pitre," viz:

Three islands in sections twenty, twenty-one, twenty-eight and twenty-nine in township No. ten (10) south of range number
81 twenty east in south eastern east of river land district, containing fifty-one 40/100 acres.

Together with all rights of accretion, rights, ways, advantages and appurtenances thereunto belonging or in anywise appertaining, or existing under present laws; the whole according to a plan or sketch hereto annexed for reference and marked "B," for identification herewith, and duly paraphed "*Ne varietur.*"

Which said above described property was acquired by the present vendor by purchase from the State of Louisiana as per patent No. 4955 dated January twenty-sixth 1883.

To have and to hold the above described lands and property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of fifty dollars (\$50.00) cash, which the said purchaser has paid in ready and current money, to the said vendor, who hereby acknowledges receipt thereof, and grants full acquittance and discharge therefor.

And the said vendor hereupon declared that there are no taxes due or exigible upon said lands and property, and the same to be free and clear of all liens, mortgages, privileges or other incumbrances and all taxes, claims, liens and privileges therefor; with which declaration, the present purchaser expresses himself satisfied, and dispense with the production of mortgage certificate from the recorder of mortgages in and for the parish of St. Bernard and all other certificates required by law, herein agreeing to hold me, notary, harmless for non production therefor.

Thus done and passed, in my office, at the city of New Orleans, on the day, month and year herein first above written, in the presence of Messieurs Edward Eugene O'Brien and Charles Kummel, both of this city, competent witnesses, who hereunto sign their names with the said appearers, and me, notary, after reading of the whole.

(Original signed)

HENRY J. LEOVY.
JOSEPH C. GILMORE.

E. E. O'BRIEN.
CHAS. KUMMEL.

THEO. COTONIO, Not. Pub.

A true copy of the original.

Registered in the conveyance office, Book, 18, folio, 42 *et seq.* of the parish of St. Bernard, State of Louisiana.

[SEAL.]

THEO. COTONIO, Not. Pub.

82 (Endorsed :) New Orleans, March 2nd, 1892. (Copy Sale of land by Henry J. Leovy to Joseph C. Gilmore. Registered in conveyance office, Book, 18, folio, 42 *et seq.*, of the parish of St. Bernard, State of Louisiana. Theo. Cotonio, not. pub. Exhibit "M.")

(Endorsed :) Supreme Court U. S. October term, 1902. Term No. 12, orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit "M" to bill of complaint. Filed Oct. 27, 1902.

83

EXHIBIT Z TO BILL OF COMPLAINT.

183.

April 18th, 1867.

Sale of Lands—Richard Pindell, Esq., to Henry J. Leovy, Esq.

STATE OF LOUISIANA, {
 City of New Orleans. }

Be it known, that this day, before me, George William Christy, a notary public, in and for the city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, personally came and appeared Richard Pindell Esq., of this city, who declared that for the consideration and on the terms and conditions herein-after set forth he does, by these presents, grant, bargain, sell, convey, transfer, assign and set over with all legal warranties unto Henry Jefferson Leovy Esq. also of this city present, accepting and purchasing for himself his heirs and assigns and acknowledging delivery and possession thereof, all and singular the following described property, situated in the south eastern land district of Louisiana in the parish of St. Bernard, being swamp lands subject to tidal overflow, viz:

The north west quarter of section fifteen in township fourteen south of range sixteen east, containing one hundred and sixty acres ' ' being the same land which was purchased by the present vendor from the State of Louisiana, as per patent number "one hundred and ninety-three" dated 20th March 1867.

And here the said purchaser declared that he dispensed with the production of a mortgage certificate from the recorder of mortgages for the said parish of Saint Bernard, showing the mortgages, if any, on said property, and to be annexed to this act as required by article "3328" of the Civil Code of this State.

84 The U. S. internal revenue stamps of two dollars required for this act has been hereunto duly affixed and cancelled.

To have and to hold, the said property unto the said purchaser, his heirs and assigns, to their proper use and behoof, forever. And the said vendor for himself & heirs the said property to the said purchaser his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons, whomsoever, by these presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor or against the vendors of his vendor fully authorizing the said purchaser to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the

price and sum of one thousand six hundred dollars (\$1600.00) which has been paid in cash by the said purchaser at the execution of these presents, the receipt of which is hereby acknowledged by the said vendor and acquittance therefor granted.

And now personally came and intervened in these presents, Mistress Anna Monroe of lawful age and wife of said vendor, who did declare unto me, notary, that it is her wish and intention, to release in favor of said purchaser, the property herein described, from the matrimonial, dotal, paraphernal and other rights, and from any claims, mortgages, or privileges, to which she is or may be entitled, whether by her marriage with her said husband or otherwise.

Whereupon I, the said notary, did inform the said wife, verbally, apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law, a legal mortgage on the property of her said husband:—First: For the restitution of her dowry, and for the reinvestment of her dotal property, sold by her husband, and which she brought in marriage reckoning from the celebration of the marriage: Secondly: For the 85 restitution and re-investment of the dotal property, by her acquired since marriage whether by succession or donation, from the day the succession was opened or the donation perfected: Thirdly: For nuptial presents. Fourthly: For debts by her contracted with her said husband, and fifthly: For the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal and other rights, and privileges thus secured to her by law, on the property of her said husband, and that availing herself of the rights secured to her by the second section of an act passed by the legislature of this State, nevertheless, did persist in her intention of renouncing not only all the rights, claims and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever to which she is or may be entitled by any laws, now or heretofore in force in the State of Louisiana.

And the said husband being now present aiding and authorizing his said wife, in these presents, she the said wife, did again declare, that she did, and doth, hereby make a formal renunciation and relinquishment to all her said matrimonial, dotal, paraphernal and other rights, claims and privileges, in favor of the said purchaser, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office, at the city of New Orleans, aforesaid, in the presence of Charles C. Van Benthuyzen & Isaac N. Maynard witnesses, of lawful age and domiciliated in this city, who hereunto sign their names, together with the parties and me, the

said notary, on this eighteenth day of April one thousand eight hundred and sixty seven.

R. PINDELL.
ANNA PINDELL.
HENRY J. LEOVY.

CHAS. C. VAN BENTHUYSEN.
I. N. MAYNARD.

GEO. W. CHRISTY,
Not. Pub.

New Orleans Louisiana, September 27, 1902.

86 I, the undersigned, Peter Stiff, custodian of notarial records, in and for the parish of Orleans, State of La., do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and seal this twenty seventh day of September 1902, at New Orleans, La.

PETER STIFFT, [SEAL]
Custodian of Notarial Records.

(Endorsed :) Supreme Court U. S. October Term 1902 Term No. 12, orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit "Z" to bill of complaint.

87 And on the same day, to wit, on the 27th day of October, A. D. 1902, the following appearances for complainant were filed, viz :


Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	} No. 12, Orig'l, October Term,
<i>vs.</i>	
STATE OF MISSISSIPPI.	1902.

The clerk will enter my appearance as counsel for the complainant.

(Name) WALTER GUION,
(P. O. address) Godchaux Bldg., N. O., La.

 NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed :] Supreme Court U. S. October term, 1902 Term No. 12, orig'l. Appearance for compl't. Filed Oct. 27, 1902.

88

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	} No. 12, Orig'l, October Term, 1902.
vs. STATE OF MISSISSIPPI.	

The clerk will enter my appearance as counsel for the complainant.

(Name) JOHN DYMOND, Jr.,
(P. O. address) New Orleans, La.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1902 Term No. 12 orig'l Appearance for compl't Filed Oct. 27, 1902.

89 And afterwards to wit on the 28th day of October, A. D. 1902, a subpoena was issued and delivered to the marshal for service.

And afterwards, to wit, on the third day of November, A. D. 1902, the subpoena and proof of service of same was filed in the words and figures following, to wit:

90 THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the State
[SEAL.] of Mississippi, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded, that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding jurisdiction in equity, on the 12th day of January, 1903, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Louisiana in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller Chief Justice of the United States, at the city of Washington, the 28th day of October A. D. 1902.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Returned executed through acceptance of service by the governor of the State of Mississippi and by the attorney general of the State of Mississippi the 31st day of October, 1902, as evidenced by their writing and signatures attached hereto.

J. M. WRIGHT, Marshal.

Nov. 3, 1902.

91

Copy.

THE UNITED STATES OF AMERICA, ss :

The President of the United States of America to the State
[SEAL.] of Mississippi, Greeting :

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding jurisdiction in equity on the 12th day of January, 1903, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Louisiana in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the city of Washington, the 28th day of October, A. D. 1902.

(Signed)

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

A true copy

J. M. WRIGHT,

Marshal, Supreme Court U. S.

Service of the within process is hereby accepted this 31st day of October, 1902, at Jackson, State of Mississippi.

A. H. LONGINO,

Governor of the State of Mississippi.

92

Copy.

THE UNITED STATES OF AMERICA, ss :

The President of the United States of America to the State
[SEAL.] of Mississippi, Greeting :

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding

jurisdiction in equity, on the 12th day of January, 1903, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Louisiana in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the city of Washington, the 28th day of October, A. D. 1902.

(Signed)

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

A true copy

J. M. WRIGHT,

Marshal, Supreme Court U. S.

Service of the within process is hereby accepted this 31st day of October 1902, at Jackson, State of Mississippi.

MONROE McCLURG,
Attorney General of the State of Mississippi.

(Endorsed :) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. The State of Louisiana, complainant, vs. The State of Mississippi Subpoena and proof of service of same. Filed Nov. 3d, 1902.

93 And afterwards to wit on the 8th day of December, A. D. 1902, the following appearance for complainant was filed, viz :

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Com- plainant, vs. STATE OF MISSISSIPPI.	}	No. 12, Orig'l, October Term, 1902.
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The clerk will enter my appearance as counsel for the complainant.

(Name :) ALEXANDER PORTER MORSE,
(P. O. address :) 1505 Penna. Ave., Washington, D. C.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed :) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. Appearance for compl't. Filed Dec. 8, 1902.

94 And afterwards, to wit, on the 12th day of January A. D. 1903, the following appearance for defendant was filed, viz:

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Compl't, }
vs. } No. 12, Orig'l, October Term, 1902.
 STATE OF MISSISSIPPI. }

The clerk will enter my appearance as counsel for the defendant.

(Name:) MONROE McCLURG,
 Att'y Gen'l.

(P. O. address:) Jackson, Miss.

~~NOTE~~ NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1902. Term No. 12 orig'l Appearance for def't Filed Jan. 12, 1903.

95 And on the same day, to wit, on the 12th day of January A. D. 1903, an application for leave to file demurrer was filed in the words and figures following, viz:

96 Office Supreme Court U. S. Filed Jan. 12, 1903. James H. McKenney, Clerk.

Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant, }
versus } No. 12, Original.
 STATE OF MISSISSIPPI, Defendant. }

Application for Leave to Demur.

97 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant, }
versus } No. 12, Original.
 STATE OF MISSISSIPPI, Defendant. }

Application for Leave to Demur.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

Your petitioner, The State of Mississippi, one of the United States of America, by A. H. Longino, governor, and Mouroe McClurg,

attorney general, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly represented that in the bill of complaint filed in this court upon the *ex parte* application of the governor and attorney general of said State of Louisiana without notice, it is alleged that,

because of the matters and things therein set forth, there is
98 a dispute between the said State of Louisiana and the State of Mississippi as to the boundary line between said States in the waters to the south of the said State of Mississippi, and the south-east of said State of Louisiana; the prayer of said bill is as follows:

"And after due proceedings may it please your honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most southern junction of the eastern mouth of Pearl river with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon island through Mississippi sound, north of Isle à l'Étoile through Cat Island Pass channel, southwest of Cat island through Chandeleur Island sound, northeast of the Chandeleur islands to the gulf of Mexico, as is delineated on the original map submitted by the Louisiana boundary commission to the Mississippi boundary commission, and now made part of this bill marked Exhibit "E," that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require."

All of which will appear by reference to the said bill of complaint on file with this honorable court.

Your petitioner, The State of Mississippi, by her governor and attorney general aforesaid, humbly submits to your honors that, because of the insufficiency and fatal defects of the said bill of complaint indicated by the aforesaid demurrer, even if all of the material and well pleaded allegations of the said bill should be
99 confessed, the said bill would be, nevertheless, dismissed on the hearing and that in such case the rule of procedure in this honorable court is to sustain a demurrer and dismiss the bill of complaint.

Kansas v. Colorado, 185 U. S., 126 (145).

Louisiana v. Texas, 176 U. S., 1 (13 *et seq.*).

It is humbly submitted that by the most casual examination of the said bill of complaint it will be observed that the boundary line

between said States is definitely and permanently fixed by law, at three leagues from the Louisiana coast, and at six leagues from the Mississippi shore, and farther, that there is nothing in said bill contained showing a controversy between said States justiciable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer and that a day may be fixed by your honors for the hearing of the same. And as in duty bound your petitioner will ever pray.

MONROE McCLURG,
Attorney General of Mississippi.

100 (Endorsed :) Supreme Court U. S. October term 1902.
Term No. 12, original. State of Louisiana, complainant, v.
State of Mississippi. Application for leave to file demurrer. Filed
January 12, 1903.

101 And on the same day, to wit, on the 12th day of January,
A. D. 1903, the following order appears of record, viz.:

102 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	} No. 12, Original, Octo- ber Term, 1902.
THE STATE OF MISSISSIPPI.	

On motion of Mr. Monroe McClurg, of counsel for the defendant leave is hereby granted to file the demurrer of the defendant to the bill of complaint herein.

January 12th, 1903.

103 And on the same day, to wit, on the 12th day of January,
A. D. 1903, a demurrer was filed in the words and figures
following, viz:

104 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant, }
versus } No. 12, Original.
 STATE OF MISSISSIPPI, Defendant. }

Demurrer.

105 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant, }
versus } No. 12, Original.
 STATE OF MISSISSIPPI, Defendant. }

Demurrer.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States :

The demurrer of The State of Mississippi, defendant above named, by A. H. Longino, governor, and Monroe McClurg, attorney general, of said State of Mississippi, to the bill of complaint of the State of Louisiana, by William W. Heard, governor, and Walter Guion, attorney general, of said State of Louisiana.

The defendant, The State of Mississippi, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, demurs thereto and for cause of demurrer shows :

106 First. Because it doth not sufficiently appear in and by the said bill of complaint that the same was filed or is being prosecuted by the authority of the State of Louisiana, or by the authority of any law whatsoever. The said governor and attorney general hath no authority in law to proceed in this matter of their own motion.

Second. This court has no jurisdiction of this cause, because it appears from the face of the bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, a controversy between the States of Louisiana and Mississippi as to their boundary line, in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana.

Third. Because it appears from the face of the bill that the boundary line between said States in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana are clearly, definitely and permanently fixed by the several acts of Congress referred to and pleaded by the complainant in her said bill admitting the said States into the Union ; that of Louisiana at three leagues from the coast, that of Mississippi at six leagues from her

shore; that it is impossible for said lines to conflict upon either land or water.

Fourth. It appears from the face of said bill that the complainant, The State of Louisiana, has not attempted to mark and define by buoys, or otherwise, her boundary line in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana.

Fifth. Because it appears upon the face of said bill that the action of the governors of said States in appointing so called commissioners to determine the water boundary line between the said States, and the alleged action and recommendation of the so called commissioners, or of any of them, was without authority of law as to fixing the boundary line between said States and in no wise binding upon either of said States in their sovereign or corporate capacity, and it clearly appears that it was not so intended. Jurisdiction cannot be conferred by consent.

Sixth. Because said bill shows upon its face that this suit is in reality for, and on behalf of, certain individuals who reside in the State of Louisiana engaged in taking oysters and fish along the coast of said States, and that although the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is in fact loaning its name to said individuals, and is only a nominal party to said suit, that the real parties in interest are the said private individuals and persons residing in said State and interested in the oyster and fish trade.

Seventh. Because it appears from the face of said bill that the governor and attorney general of the State of Louisiana are seeking to maintain in the sovereign right of said State, this suit for the redress of the supposed wrongs of certain private citizens of said State, namely, those engaged in the oyster and fish trade, while under the Constitution of the United States and the laws enacted thereunder said State possesses no such sovereignty as empowers her to bring an original suit in this court for such purpose.

Eighth. Because it appears upon the face of said bill that no property rights of the State of Louisiana are in any manner affected by the matters alleged in the said bill; nor is there any such property right involved in this suit as would give to this court original jurisdiction of this cause.

Ninth. Because it appears from the face of said bill of complaint that the acts therein complained of are not the acts of the State of Mississippi in its sovereign or corporate capacity, nor acts of any of her officers, committed by her authority, but the acts of certain individual persons engaged in the oyster and fish trade, against whom relief is sought and who are not made parties herein.

Tenth. Because it appears upon the face of said bill that the State of Mississippi, nor any officer of said State authorized by law to act for and on her behalf, has not in any manner whatsoever denied or controverted the boundary line of the State of Louisiana in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana.

Eleventh. Because it clearly appears from the face of the said bill of complaint that its purpose is to extend, vary and change, by judicial procedure, the boundary lines between said States in the waters to the south of the State of Mississippi, differently from where they were clearly and permanently fixed by the several acts of Congress referred to and pleaded in the said bill admitting said States into the Union.

Twelfth. Because it appears upon the face of said bill of complaint that the alleged confusion as to the boundary line between the said States in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana, and the alleged threat of an armed conflict between the civil officers of the parish of St. Bernard, in the State of Louisiana, and of the county of Harrison, in the State of Mississippi, is but a conclusion of the pleader, the facts producing such confusion and threat not being set out in the bill as required by law.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

MONROE McCLURG,
Attorney General of Mississippi.

109 THE STATE OF MISSISSIPPI, {
Hinds County. }

Personally appeared before me the undersigned clerk of the supreme court of the State of Mississippi, A. H. Longino, the governor of said State, and Monroe McClurg, the attorney general of said State, representing the said State of Mississippi, defendant, in the above entitled cause, and say that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Sworn to and subscribed before me this the 8th day of January, 1903.

A. H. LONGINO, Governor.
MONROE McCLURG,
Attorney General.

[SEAL.]

E. W. BROWN,
Clerk of the Supreme Court of Mississippi.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

MONROE McCLURG,
Attorney General of Mississippi.

110 (Endorsed :) Supreme Court U. S., October term, 1902.
Term No. 12, original. State of Louisiana, complainant, vs.
State of Mississippi. Demurrer. Filed January 12, 1903.

111 And on the same day, to wit, on the 12th day of January, A. D. 1903, the following entry appears of record, viz :

112 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	} No. 12, Original, Oc- tober Term, 1902.
vs.	
THE STATE OF MISSISSIPPI.	

Mr. Monroe McClurg, of counsel for the defendant, submitted to the consideration of the court a motion and stipulation of counsel to fix a day for the hearing of the demurrer herein.

January 12th, 1903.

113 And on the same day, to wit, the 12th day of January, A. D. 1903, the motion of defendant to assign demurrer for argument was filed in the words and figures following, viz :

114 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,	} No. 12, Original.
vs.	
STATE OF MISSISSIPPI, Defendant.	

Motion to Set Down Demurrer for Hearing on Oral Argument.

And now comes The State of Mississippi, through Monroe McClurg, its attorney general, and moves this honorable court to set down the demurrer herein for hearing on oral argument for such time and date as may suit the convenience of the court, not earlier than the last week in February or the first week in March, 1903.

MONROE McCLURG,

Att'y Gen'l for the State of Mississippi.

Washington, D. C., January 12, 1903.

(Endorsed :) Supreme Court of the United States. Oct. term 1902. Original No. 12. State of Louisiana, complainant, vs. State of Mississippi, defendant. Motion of the defendant to set down demurrer for oral argument. Monroe McClurg, att'y gen'l for the State of Mississippi.

(Endorsed :) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. State of Louisiana, complainant, v. State of Mississippi Motion of the defendant to assign demurrer for argument. Filed Jan'y 12, 1903.

115 And on the same day, to wit, on the 12th day of January, A. D. 1903, an agreement of counsel to assign demurrer for argument was filed in the words and figures following, viz :

116 In the Supreme Court of the United States.

LOUISIANA, Complainant, }
 vs. } Original, No. 12, October Term, 1902.
 MISSISSIPPI, Defendant. }

It is hereby agreed between counsel on both sides in the above entitled cause that by consent of the honorable court, the said cause may be heard on the — day of — 1903, on the demurrer filed by the State of Mississippi to the bill of complaint filed by the State of Louisiana.

Both parties pray this honorable court to set the case accordingly for oral argument. All of which is most respectfully submitted. This January 12th, 1903.

WALTER GUION,
 Att'y General for the State of Louisiana.
 MONROE McCLURG,
 Att'y General for the State of Mississippi.

(Endorsed :) Supreme Court U. S. October term, 1902 Term No. 12 orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Agreement to assign demurrer for argument. Filed Jan'y 12th, 1903.

117 And afterwards, to-wit, on the 19th day of January, A. D. 1903, the following order appears of record, viz :

118 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, }
 vs. } No. 12, Original, Octo-
 THE STATE OF MISSISSIPPI. } ber Term, 1902.

On consideration of the motion to fix a day for the hearing of the demurrer herein,

It is now here ordered by the court that said hearing be, and the same is hereby assigned for Monday, March 2d next, after the cases heretofore assigned for that day.

January 19th, 1903.

[Endorsed:] Supreme Court of the United States, October term, 1902. Term No. 12, original. Order. Filed Jan. 19, 1903.

119 And afterwards, towit, on the 2d day of March A. D. 1903, a stipulation to submit demurrer on briefs was filed in the words and figures following, viz :

120 In the Honorable the Supreme Court of the United States,
October Term, Nineteen Hundred and Two.

STATE OF LOUISIANA, Complainant, }
vs. } Number Twelve, Original.
STATE OF MISSISSIPPI, Defendant. }

It is hereby agreed between the State of Mississippi, represented herein by her attorney general, and the State of Louisiana, represented by her attorney general, that, with the permission of this honorable court, the demurrer filed herein by defendant and set down for a hearing in the honorable the Supreme Court of the United States on Monday March 2nd 1903 shall be submitted to the court without oral argument and on briefs to be filed by complainant and defendant.

MONROE McCLURG,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

Feb'y 3rd, 1903.

(Endorsed :) Supreme Court U. S., October term, 1902. Term No. 12 original. State of Louisiana, complainant, vs. State of Mississippi. Stipulation to submit demurrer on brief. Filed Mar. 2, 1903.

121 And on the same day, to wit, on the 2d day of March A. D. 1903, the following entry appears of record, viz :

122 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, }
vs. } No. 12, Original, October
THE STATE OF MISSISSIPPI. } Term, 1902.

The demurrer of the defendant herein was submitted to the consideration of the court on printed arguments by Mr. John Dymond, Jr., Mr. Alexander Porter Morse, and Mr. Walter Guion, of counsel for the complainant, and Mr. Monroe McClurg, of counsel for the defendant, and leave was granted counsel for the complainant to file a reply brief within twenty days.

March 2d, 1903.

123 And on the same day, to wit, on the 2d day of March, A. D. 1903, a stipulation that complainant have twenty days in which to file reply brief, was filed in the words and figures following, viz :

124 In the Honorable Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,	} Number 12, Original.
<i>vs.</i>	
STATE OF MISSISSIPPI, Defendant.	

It is hereby agreed between the State of Mississippi, represented herein by her attorney general, and the State of Louisiana, represented by her attorney general, that, with the permission of this honorable court, a delay of twenty (20) days from the second day of March 1903 be granted to the State of Louisiana within which to file a supplemental brief on behalf of The State of Louisiana, complainant, in reply to the brief filed by defendant, The State of Mississippi.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

(Endorsed :) Supreme Court, U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Stipulation that complainant have twenty days within which to file reply brief. Filed Mar. 2, 1903.

125 And afterwards, towit, on the 6th day of April, A. D. 1903, the following order appears of record, viz :

126 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	} No. 12, Original, October Term, 1902.
<i>vs.</i>	
THE STATE OF MISSISSIPPI.	

This cause came on to be heard on the demurrer of the defendant to the bill of complaint and was argued by counsel. On consideration whereof,

It is now here ordered, adjudged and decreed by this court that the said demurrer be, and the same is hereby, overruled, and the defendant is granted leave to answer on or before the first day of the next term.

April 6th, 1903.

[Endorsed :] Supreme Court of the United States. October term, 1902. Term No. 12, orig'l. Order. Filed April 6, 1903.

127 And afterwards, to wit, on the 13th day of October, A. D. 1903, a motion for leave to file answer and cross bill of the State of Mississippi and for process, was filed in the words and figures following, towit :

128 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA, Complainant,
versus
 STATE OF MISSISSIPPI, Defendant. } Original, No. 11.

Motion.

129 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA, Complainant,
versus
 STATE OF MISSISSIPPI, Defendant. } Original, No. 12.

Motion.

To the honorable Chief Justice and the honorable associate justices:

The State of Mississippi, defendant, by Andrew H. Longino, governor, and William Williams, attorney general, humbly shows as follows, to-wit:

That the State of Louisiana, her complainant against the State of Mississippi, in this honorable court, on the 27th day of October, 1902, praying a decree defining the lines dividing the said States in the waters of the Gulf of Mexico; that subpoena was issued, made returnable the 1st day of January, 1903, at which date the State of Mississippi appeared by Monroe McClurg, her then attorney general, and demurred to said complaint; that afterwards, to-wit: on the — day of March, 1903, said demurrer was disallowed and overruled by this honorable court, and the State of Mississippi required to answer to the October term, 1903.

130 The State of Mississippi herewith humbly presents her answer to said bill of complaint and, according to the usual practice in such cases, accompanies her said answer by a cross-bill making The State of Louisiana defendant thereto. She humbly prays that her said answer and cross-bill may be filed, and that subpoena may be allowed to issue out of this honorable court, directed to the Honorable William W. Heard, governor of the State of Louisiana, and the Honorable Walter Guion, attorney general of said State, commanding them to appear and answer said cross-bill, upon a day to be named by this honorable court.

WILLIAM WILLIAMS,
 Attorney General of Mississippi.

MONROE McCLURG,
 DODDS & GRIFFITH,
 HANNIS TAYLOR,
 Of Counsel.

(Endorsed :) Supreme Court, U. S. October term 1903. Term No. 11, original. State of Louisiana, complainant, *vs.* State of Mississippi. Motion for leave to file answer and cross bill of State of Mississippi & for process. Filed Oct. 13, 1903.

131 And on the same day, towit, on the 13th day of October, A. D. 1903, the following entry appears of record, viz :

132 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, }
vs. } No. 11, Original, Octo-
 THE STATE OF MISSISSIPPI. } ber Term, 1903.

On motion of Mr. Fred Beall, in behalf of counsel for the defendant, leave is hereby granted to file the answer and cross-bill of the defendant herein.

October 13th, 1903.

133 And on the same day, towit, on the 13th day of October, A. D. 1903, the answer and cross-bill of the State of Mississippi was filed in the words and figures following, viz :

134 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA, Complainant, }
versus } No. 11, Original.
 STATE OF MISSISSIPPI, Defendant. }

Answer and Cross-bill.

William Williams, attorney general State of Mississippi.
 Monroe McClurg, Dodds & Griffith, of counsel.

135 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA }
v. } No. 11, Original. Answer and Cross-Bill.
 STATE OF MISSISSIPPI. }

The answer of the State of Mississippi, one of the United States of America, by Andrew H. Longino, governor, and William Williams, attorney general, by leave of this honorable court, to the bill of complaint exhibited against said State of Mississippi by the Honorable William W. Heard, governor, upon the information of Hon. Walter Guion, attorney general, for and on behalf of the State of Louisiana, also one of the United States of America.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States :

This defendant now and at all times hereafter saving to herself all, and all manner of benefit of exception or otherwise that can or

may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for her to make answer to, answering says :

135½

I.

To the first paragraph of said bill defendant says that she admits that the State of Louisiana was admitted into the Union by virtue of chapter 50 of the United States Statutes at Large as stated in the bill of complaint.

II.

Answering the second paragraph defendant denies that according to the description given in the act of Congress aforesaid that the said act meant that it was necessary to reach the gulf of Mexico through the Rigolets into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, and to follow said channel, north of Half Moon island, through the Mississippi sound to the north of Isle a Pitre through the Cat Island channel southwest of Cat island into the gulf of Mexico, or that it was intended by said act that the line above referred to should constitute the eastern boundary line of the State of Louisiana ; and defendant denies the correctness of diagram No. 1, filed as a part of the bill of complaint, but on the contrary thereof defendant alleges that the true intent and purport of said act of Congress admitting the State of Louisiana into the Union as to the above mentioned line, was and is as stated in the cross-bill herewith filed.

III.

Answering the third paragraph of said bill of complaint defendant admits that certain territory was added to the State of Louisiana as therein stated.

IV.

Answering the fourth paragraph of the bill of complaint, this defendant denies that the legislation therein referred to had the effect claimed in said paragraph of said bill respecting the boundary line of the State of Louisiana ; and she specifically denies that the
136 deep water channel through the upper corner of Lake Borgne north of Half Moon island, eastward through the deep water channel along the Mississippi sound until it reaches the Cat Island channel north of Isle a Pitre, and southwest of Cat island, whence, passing through Chandeleur sound, northeast of Chandeleur island, it enters the gulf of Mexico, and runs south around the delta of the Mississippi river, constitutes the true boundary line. And defendant denies the correctness of diagram No. 2, filed as a part of the bill, but on the contrary thereof charges and alleges that the effect of the legislation aforesaid was to fix the line between said States south-

ward out of the mouth of Pearl river as set forth in the cross-bill herewith filed.

V.

Answering the fifth paragraph of said bill, defendant denies the correctness of the claim of complainant as stated in said bill, but admits that eastward of the line between said States and that point stated in the cross-bill aforesaid, is the State of Mississippi, and that said State of Mississippi was admitted into the Union of the United States by an act of Congress approved March 1st, 1817, as stated in the bill creating the western part of the then Mississippi Territory into a State and that said State was and is bounded as stated in said act of Congress.

VI.

Answering the sixth paragraph of the bill, this defendant denies that the said act of Congress admitting the State of Mississippi into the Union intended that the southern boundary line of said State should be as stated in said bill of complaint, but defendant charges and alleges the true southern boundary line of said State of Mississippi was and is as stated in the cross-bill herewith filed.

VII.

Answering the seventh paragraph of said bill, defendant admits that the west end of Petit Bois island, all of Horn island, all of Ship island, all of Cat island and the small islands north of these were intended to be a part of the State of Mississippi, but defendant denies that they are the only islands that belong to the said State and she denies the correctness of diagram No. 3, filed as a part of the bill.

VIII.

Answering the eighth paragraph of said bill, defendant denies that it was or is contemplated by the acts of Congress of 1812, aforesaid, creating the State of Louisiana, that all of the other islands except those named in the last paragraph to be south and west of the boundary line between said States described in the bill, were intended to be embraced in the State of Louisiana; and defendant charges and alleges that said line between said States is as stated in the cross-bill.

IX.

The ninth, tenth, eleventh and twelfth paragraphs of the bill are confessed. The thirteenth paragraph of the bill is admitted to be substantially correct so far as this defendant has information or believes the facts to be with reference to the location of the natural oyster reefs shown by the Fish Hawk's map, marked diagram No. 4 to the bill of complaint, but defendant denies that said reefs are in

the waters of St. Bernard parish, in the State of Louisiana, but on the contrary thereof, are within the waters of the State of Mississippi as set forth and stated in the cross-bill.

X.

Answering the fourteenth paragraph of the bill of complainant, defendant denies the correctness of diagram No. 5, filed as a part of the bill of complaint, and she denies the correctness of the statement in said bill that the true line between the two States in the waters thereof is shown by said diagram, but on the contrary thereof she again alleges and charges that the true line fixed by the acts of Congress admitting the said two States into the Union is as stated in the cross-bill.

XI.

Answering the fifteenth paragraph, defendant admits that the line between said States, in the waters aforesaid, has never been marked in any manner by either State; she admits that the deep water channel out of the mouth of Pearl river through the upper corner of Lake Borgne and on into the Gulf, as stated in the bill, has been marked by buoys by and under the direction of the United States Government for navigation and commercial purposes, but she denies that said marking of said deep water channel was ever intended to fix in any manner whatsoever any part of the boundary line between said States.

XII.

Answering the sixteenth paragraph, defendant denies upon her belief that confusion has resulted in the State of Louisiana, or that a great public demand has arisen in that State, for a marked boundary line between that State and the State of Mississippi in the waters aforesaid, but she respectfully insists that if such condition actually existed in said State, it was first the duty of said State to mark, or undertake to mark, the true line dividing it from the State of Mississippi. And defendant, upon her belief, denies that any fisherman or other citizens of the State of Mississippi have violated the laws of Louisiana by fishing in her waters.

XIII.

Answering the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third paragraphs of the bill, this defendant admits that proceedings were had similar to those copied into said bill, but defendant denies the allegations of the bill to the effect that there was any crisis or threatening armed conflict between the officers of Louisiana and those of Mississippi, or that there was any controversy between the two States as contemplated by article 3, section 2 of the Constitution of the United States, and this defendant now expressly denies, that

the matters and things set forth in the said sections of the bill, last above referred to, constitutes a controversy between the two States within the meaning of the Constitution, and defendant denies that there has ever been such controversy between the two States as to give this court jurisdiction of an original bill to settle the same. And defendant expressly denies the charges found in the second clause, on page 9 of said bill, to the effect that the "marsh lands" therein referred to are not islands, but alleges that they are small islands distinctly marked in said waters, and she denies that the people of Mississippi have ever shown a disposition to unlawfully invade the territory of Louisiana, and alleges that they have in fact not done so. Defendant says further that it was never intended by the governors of said States, respectively, or by the so called commissioners, appointed by them, as mentioned in the bill of complaint, that said commissioners should undertake to settle or fix the boundary line between said States in said waters, but only to make a peaceable adjustment of an unimportant dispute by an insignificant number of fish and oyster takers of the two States in the said waters. And defendant denies that the State of Louisiana had exhausted, before the filing of her said bill of complaint, all means whereby the said boundary might be established amicably except for the suggestion made by the so-called commissioners appointed by the governor of Mississippi, and she denies that the recommendation of the said Mississippi commissioners, that a friendly suit in the Supreme Court of the United States be instituted to settle the alleged controversy was sufficient to create a controversy between the two States within the meaning of the Constitution of the United States, or to give this court original jurisdiction.

139

XIV.

Responding to the twenty-fourth paragraph of the bill, the State of Mississippi specifically denies that the line claimed by the State of Louisiana, to-wit: a line beginning at the most southern junction of the channel of the east branch of the Pearl river with Lake Borgne thence eastward following the deep water channel to the north of Half Moon island, through the Mississippi Sound channel, Cat Island pass, northeast of Isle a Pitre into the gulf of Mexico, there divides the waters between the two States, or agrees with, or is in accord with the acts of Congress aforesaid, creating, respectively, the State of Louisiana and the State of Mississippi, as shown by diagram No. 5 filed with the bill, or in any other manner; and defendant expressly denies the charge contained in the bill, to the effect that any other boundary than the deep water channel as therein described would cause the line in the waters of the two States to conflict and overlap, but on the contrary thereof, defendant charges and alleges, as aforesaid, that the true boundary between the two States in the waters aforesaid, is as stated in the cross-bill herewith filed.

XV.

Answering the twenty-fifth paragraph of the bill, defendant denies the correctness of the construction placed by complainant in her said bill upon the word "westwardly" in describing the southern boundary of the Mississippi line as set forth in said paragraph of said bill of complaint, and she denies that the complainant has, in said paragraph or in said bill, correctly interpreted the intention of Congress as expressed in the act creating the State of Mississippi with reference to said southern boundary line of said State, and she denies that Congress ever intended, by said act, that the southern boundary line of the State of Mississippi should be a line drawn from the six league water limit between the States of Alabama and

Mississippi in a direct course to the most eastern mouth of
 140 Pearl river, but on the contrary thereof, defendant shows, alleges and charges that it was the purpose and intention of Congress, as clearly shown and expressed in the act admitting Mississippi into the Union, that her southern boundary line should extend from the six league water limit between said State and Alabama with the meanderings of the shore line to a point six leagues to the southward of the most eastern, or most southern, mouth of Pearl river, and then if such line should, at any point touch the lawful boundary of Louisiana as fixed by the several acts of Congress, admitting that State into the Union, there would be no lap or conflict, but the Mississippi line would stop at, and follow said Louisiana line. Your defendant alleges and charges the truth to be that a line drawn as contended by the complainant in her said bill from the six league water limit between Alabama and Mississippi, in a direct course to the most eastern mouth of Pearl river, would, in fact, cut off a part of the mainland of Mississippi in Hancock county opposite the Saint Joseph light house, and defendant reiterates her declaration that the true southern line of said State is as stated in the cross-bill.

XVI.

Defendant admits that the Mississippi line running parallel with the southern shore of Mississippi at a distance of six leagues from the shore line, and following the meandering of the shore at all points between the mouth of Pearl river and the Alabama line would include Grassy, Half Moon, Round, Le Petit Pass islands and Isle a Pitre, all of which named islands and all other islands within said six league water reach belong, not to the State of Louisiana, but to the State of Mississippi; that the State of Mississippi does not claim and never has claimed any part of the mainland of the State of Louisiana, as shown by diagram No. 6, filed with the bill, the accuracy and correctness of which diagram she denies, or that she
 141 has in any other manner ever made such claim; and she denies that a line drawn in the waters aforesaid, at three leagues from the high tide marked on the true mainland of

the "coast" of the State of Louisiana, would include the islands last above named; and she alleges and charges that if a line so drawn three leagues from the Louisiana mainland would embrace said islands still they do not belong to the State of Louisiana since such is not the true boundary line between the States of Louisiana and Mississippi, but the said true line is that described in the cross-bill filed herewith.

XVII.

Answering further, and to the twenty-sixth paragraph of complainant's bill, defendant denies that the marsh territory claimed by the State of Mississippi is part of the mainland of the State of Louisiana; she admits that said marsh islands, except the islands named in said paragraph, have been known and called, since time immemorial as the "Louisiana marshes," even before the State of Louisiana was admitted into the Union, and before the United States acquired the said territory and while the southern portion of Mississippi also was a part of French territory, all known as Louisiana; and she denies that said fact has any significant bearing upon the location of the line between said States or as to the ownership of said States to, or sovereignty over the territory known as the "Louisiana marshes," no more so than that the parishes of Louisiana north of the River Iberville, known as the "Florida parishes" would, because of that appellation, entitle the State of Florida to the possession of, and sovereignty over those parishes. And, defendant says if it be true as stated in the twenty-sixth paragraph of the bill that any of the marsh territory rightfully belonging to the State of Mississippi under the act of Congress admitting her into the Union, have been approved by the General Land Office to the State of Louisiana, such acts by the ministerial offices of the Government had no binding force or effect as against the State of Mississippi, because such action on the part of said mere ministerial officers by a department of the Government, and on the part of the State of Louisiana in accepting said land, would not transfer the title of the State of Mississippi to said lands or her sovereign right to own and exercise jurisdiction over them because it would be a violation of sec. 3, of art. IV of the Constitution of the United States, prohibiting the taking of the territory belonging to one State, without the consent of the legislatures of the States concerned, as well as of the Congress, and defendant alleges and charges that she has exercised jurisdiction and sovereignty over said territory mentioned in said twenty-sixth paragraph of the bill, since she was admitted into the Union.

XVIII.

Responding to the twenty-seventh paragraph of the bill of complaint, defendant denies that any part of the territory claimed by the State of Mississippi is in fact part of the mainland of the State

of Louisiana, or that any of said islands referred to in said paragraph claimed by Mississippi are within the nine mile limit of distance from the coast of the State of Louisiana, as contemplated by the acts of Congress admitting that State into the Union, and she denies that said islands belong to the State of Louisiana by virtue of the second provision of the act of Congress admitting Louisiana into the Union as stated in said paragraph.

XIX.

Answering the twenty-eighth paragraph of the bill, defendant denies the correctness of complainant's statement that where contiguous States or countries are separated by water, that the channel of the waters dividing said States, constitutes a boundary line, and defendant specifically denies that such rule is applicable to this case; and she denies that there is anything in that portion of her constitution of 1890, copied into the bill of complaint, binding her to
 143 recognize the channel line insisted upon by the complainant in the instant case.

XX.

Answering further, and to the twenty-ninth paragraph of the bill, defendant admits that none of the marsh territory claimed by the State of Mississippi in this matter has ever been assessed on the tax rolls of said State or that any taxes have ever been paid to her on said territory, but she denies that such failure confers any right to the State of Louisiana to said territory; and, she says, that while it may be true that the lands described in said paragraph in said bill have been attempted to be confirmed to the State of Louisiana by the Land Department of the United States Government as belonging to and forming a part of the State of Louisiana, she denies, nevertheless, that these facts have the effect of divesting the title and sovereignty of the State of Mississippi to and over said territory, or to invest the State of Louisiana therewith, and she denies that the people of said two States, especially the people of the State of Mississippi, have recognized the territory mentioned and described in said paragraphs as belonging to the State of Louisiana. Defendant says that while it may be true that the lands composing Half Moon island and Isle a Pitre and the other territory mentioned in said paragraph have been dealt with as stated in said paragraph, the defendant, nevertheless, insists that her title to and sovereignty over said islands are protected by sec. 3 of art. IV. of the Constitution of the United States.

Defendant denies that all parts of the said territory have been assessed by the State of Louisiana, but says that on the contrary only small and separate parts and straggling portions of same have been so assessed by that State. Defendant says that, except as to a small portion of Isle a Pitre, in the whole expanse of this territory there is

not a single human habitation, nor is there any animal life thereon, nor can any such be thereon. That it is a low-lying archipelago of irregular islands, sometimes entirely covered by the high tide and at all times soft and boggy, and to walk upon them is at almost all times impracticable, and no actual occupancy of any kind has ever been had of the said territory except by the boats of fishermen, and this has heretofore been almost exclusively by citizens of Mississippi, and such occupants have always insisted, without serious question heretofore, that all this territory belonged to the State of Mississippi, and defendant expressly states and charges that the alleged dealings with the said territory by the Land Office of the United States, and by the State of Louisiana were not only without the consent or acquiescence of the State of Mississippi, but wholly without her knowledge.

XXI.

Answering the thirtieth paragraph of said bill, defendant denies the statement therein that all constituted authorities competent to create, adopt or consider the boundary line between the said States in the waters thereof have declared the said line to be as stated in said paragraph, namely: the deep water channel running from the most southern junction of the eastern mouth of Pearl river through Lake Borgne, north of Half Moon island, through Mississippi sound, north of Isle a Pitre, southwest of Cat island, through Cat Island pass, through Chandeleur sound, northwest of Chandeleur islands to the gulf of Mexico, to be the true water boundary between said States, but she alleges and charges again that the true boundary is as alleged in the cross-bill filed herewith.

XXII.

This defendant now states, alleges and charges that in addition to the foregoing specific denials, she denies generally all of the allegations of the bill of complaint adverse to the matters and
145 claims set up in this answer, and she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by strict proof.

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to her best knowledge and belief, humbly prays this honorable court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

Cross-bill.

For cross-complaint and for affirmative relief your orator, The State of Mississippi shows to the honorable Chief Justice and the honorable associate justices of the Supreme Court of the United States:

I.

That the southern boundary line of the State of Mississippi was certainly and indisputably fixed and designated by sec. 2, chapter 23, of the acts of the Congress of the United States creating said State and approved March 1, 1817, found in vol. 3, p. 348, of the Statutes at Large as follows:

"And be it further enacted, That the said State shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the northwest corner of the county of Washington, thence due south to the gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the
146 *thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning."*

II.

Your orator alleges and charges that the purpose and intention of Congress as manifested by said section of the said act above quoted was to give the State of Mississippi all lands under the waters south of her well defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl river with Lake Borgne, including all islands within said limit, and to give to said State of Mississippi sovereignty thereof, and that by virtue of the said act all territory within said limits, not being a part of the mainland of the State of Louisiana, became, was and is a part of the territory of the State of Mississippi.

III.

Your orator alleges and charges that while the boundary line from the mouth of Pearl river to the gulf of Mexico is not attempted to be defined and none was established by the acts mentioned in the bill of complaint creating and enlarging the State of Louisiana, yet said boundary line is accurately designated, and defined for the first time and established as and for the permanent southern boundary line of the State of Mississippi by sec. 2, chapter 23, of the acts of Congress approved March 1, 1817, above referred to and quoted, and your orator charges and alleges that said line by the said act established is the real true southern boundary line of said State in said waters, and that said boundary line begins at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the gulf of Mexico, and runs *westwardly with the*

meanderings of the said shore six leagues always therefrom until the said line reaches and touches the real mainland of Louisiana, which real mainland and the first touch thereof, your orator charges, in
 147 the line of high tide thereon about two miles due west of the "Indian mound" and "Lake of the Mound," (see chart 192), and thence in an almost due northward direction along and on said high tide mark of the Louisiana mainland to Mississippi sound at or near Nine Mile bayou (chart 190) and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern or eastern junction of Pearl river with Lake Borgne (chart 191), and thence from said point due north to the said Pearl river, including all islands and the land under the waters within the said limits, without regard to the name, character or size of said islands, and your orator here now again alleges and charges that the said line so drawn will include no part of the mainland of Louisiana nor any islands or waters that she is lawfully entitled to. Your orator begs leave to refer to coast charts Nos. 19, (June 1900), 190, (June 1900), 192, (Sept. 1899), and 191, (June 1900), prepared and promulgated to the public by the United States Coast and Geodetic Survey, Washington, D. C., Henry S. Pri-chett, superintendent, for all descriptions herein referred to, the size and character of which charts make it impracticable to file them as exhibits to this answer and cross-bill, but your orator will file in due time proper copies thereof, now being made, as diagrams Nos. 1, 2, 3 and 4 and made parts hereof.

IV.

That the acts of 1812 of the Congress, creating the State of Louisiana and otherwise probably correctly defining her boundary line fails, as is conceded by the said State in her original bill filed in this cause, to describe the water line from the most eastern mouth of Pearl river to the gulf of Mexico; that in order to supply that part of the line between the two points aforesaid, and to make her water boundary line complete, the said complainant, in her
 148 said original bill, proposes without authority in law to follow the deep water channel from the mouth of Pearl river to the gulf of Mexico, that is, as far south as that point in the sea where the waters of Chandeleur sound merge into the waters of the gulf of Mexico.

V.

That the said act creating the State of Mississippi was only the organization of a State government in the western part of the Mississippi Territory as such Territory had theretofore existed; that the southern part of the Territory of Mississippi was added thereto by an act of Congress approved May 14, 1812, passed by the same Congress that created the State of Louisiana and within one month of the date of said acts creating and admitting the State of Louisi-

ana into the Union. The said act of Congress making the afore-said addition to the Mississippi Territory is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory; to be governed by the laws now in force therein, or which may hereafter be enacted, and the law and ordinances of the United States, relative thereto, in like manner as if the same had originally formed a part of said Territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi Territory, shall be entitled to one representative in the General Assembly thereof." U. S. St. at L., vol. 2, p. 734.

VI.

Your orator humbly shows that the Congress of the United States, in the enactment of both the statutes relating to the southern part of Mississippi Territory, that is, the act last above cited, 149 creating that addition to the Mississippi Territory and that creating and admitting into the Union, the State of Mississippi, both of said acts being subsequent to the passage of the act creating and admitting into the Union the State of Louisiana, recognized the fact that the boundary line of the State of Louisiana embraced no island in the waters to the east of said State and to the south of the Mississippi mainland, or shore, and within six leagues of the Mississippi shore; that the said Louisiana acts are not in conflict with the aforesaid Mississippi acts, the boundaries of Louisiana only embracing such islands, as clearly shown by said acts creating and admitting her, as were within the gulf of Mexico and also within three leagues of her gulf coast, that is to say, within the gulf of Mexico proper and to the south of said State of Louisiana as contemplated by Congress; that the said line from the mouth of Pearl river to the gulf of Mexico dividing the Territory of Mississippi from the State of Louisiana was never defined until the passage of the act creating the State of Mississippi, when, *for the first time*, the southern boundary of the Mississippi Territory, the western part of which was, by said act, made the State of Mississippi, was accurately defined and established as herein stated; that the line above described and defined by the said Mississippi acts, includes no islands which are within three leagues of the Louisiana mainland and also in the gulf of Mexico as the limits of the gulf of Mexico are defined by the said State in her original bill herein.

VII.

Your orator shows that the State of Louisiana claims title and sovereignty over some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers of the United States Government and local officers of the State of Louisiana,

recited in the original bill of complaint herein; your orator charges that said claim to said islands and territory is not well
 150 founded because of the matters herein set forth and because said islands and territory have not been susceptible to actual use and occupation and because said claim is in violation of sec. 3 art. IV of the Constitution of the United States prohibiting the transfer of any part of the territory of one State to another adjacent State without the consent of the legislature- of the two States, and of the Congress. However, if this honorable court should, for any cause or reason, adjudge said islands and territory approved by the aforesaid officials to the State of Louisiana to belong to said State because of such transfers, then your orator prays that the claim and title of Louisiana thereto be restricted to the real lands or islands so lost to the State of Mississippi, and be in no case permitted to affect any lands under the waters, or any of the public oyster reefs thereunder. Your orator alleges and charges that she has exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union; that by her public statutes codified by authority of her legislature in 1857, she declared in terms what had hitherto been in fact the southern or water boundaries of her coast counties in art. 2, sec. 2, page 50, Code of 1857; as follows: “* * * and the counties bordering on the gulf of Mexico—towit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike the *gulf of Mexico*, or the inlets thereto, on a continuous direct course to the southern boundary of the State, including all islands that may lie within the limits thus defined.”
 (Italics ours.)

By which legislation above referred to, and all other legislation by the Congress and the said State of Mississippi, the “Mississippi sound” was recognized as a body of water, six leagues wide,
 151 wholly within the State of Mississippi, from Lake Borgne to the Alabama line, separate and distinct from “the gulf of Mexico.”

VIII.

That the Congress of the United States, in the early history of the Republic, in dealing with the Gulf coast or shore and carving States out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and, as is shown by the several acts of Congress, creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west, and the said States were intended to be formed and bounded, and, in the contemplation of Congress, were in fact so formed and bounded, as to give to each State jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give to any State jurisdiction over

waters adjacent to and immediately south and in front of any other State or Territory. But your orator alleges that the deep water channel line contended for by complainant, as indicated by the maps and diagrams filed with the original bill, would take nearly all of the Hancock County water front, much of the Harrison County water front, and possibly some of the Jackson County water front over all of which Mississippi has exercised jurisdiction and sovereignty since she was admitted into the Union.

IX.

Your orator alleges and charges that all of the Mississippi territory between Pearl river and the Alabama line was organized on December 14, 1812, into two counties known as Hancock and Jackson, and that on February 5, 1841 the county of Harrison was organized between the bay of St. Louis and the bay of Biloxi by the segregation of parts of Hancock and Jackson counties. Your orator shows that in an official codification of the statute laws of the State

of Mississippi the southern boundaries of said three coast
152 counties are described as follows: Section 44 of the Revised Code of Mississippi of 1880 as to Hancock county says:

" * * * thence along the middle of said bay of St. Louis, southwardly to its entrance, thence due south to the southern boundary of the State of Mississippi, *in the gulf of Mexico*; thence westwardly, with said boundary, including all islands within six leagues of the *shores of the gulf of Mexico and Lake Borgne*, to the most eastern junction of Pearl river, and *Lake Borgne*, and to the east mouth of Pearl river; thence up said river, by the middle thereof, to the point of beginning." (Italics ours.)

Section 45 of the code above mentioned describes the southern boundary of Harrison county to the middle of the bay of Biloxi, and proceeds as follows: " * * * thence along the middle of the said bay of Biloxi to its entrance, at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi; *on the Gulf of Mexico*; thence westwardly, along said boundary to a point from which a line due north strikes the middle of the bay of St. Louis; thence due north to the entrance of said bay including all the islands within six leagues of *the shore of the gulf of Mexico*." (Italics ours.)

Section 50 of the code aforesaid, as to the east and southern boundary line of Jackson county reads: " * * * thence east, on the line between townships one and two, south, to the State boundary between Alabama and Mississippi; thence southerly, on said boundary to *the gulf of Mexico*; thence westwardly with said boundary to the center of range 9, west; thence north *with section lines* to the beginning." (Italics ours.)

Your orator alleges and shows that in an official codification of her statute laws, taking effect Nov. 1, 1892, and by sections 368, 369 and 374 of said code, the boundaries of said counties are the same

as given in the Code of 1880 above mentioned. Your orator now alleges and charges that the lines constituting the southern boundaries of the counties aforesaid, in the waters of the gulf of Mexico, are and have been since the formation of Hancock and Jackson counties on Dec. 14, 1812, the consistently and uninterruptedly recognized, fixed and established southern boundary of the Mississippi territory and of the State of Mississippi up to the time of the controversy referred to in the original bill in this cause of January, 1901, and out of which this litigation grew. That during all of this time the government of the Mississippi territory and that of the State of Mississippi has exercised full and complete jurisdiction and sovereignty over the waters in the "Mississippi sound" as a part of the three counties aforesaid. Your orator shows that the said Mississippi authorities have recognized the "Mississippi sound" as a part of the territory of Mississippi, and that her township and section lines are as well established in the waters of the "Mississippi sound" as indicated by the county boundary aforesaid, as upon the lands within said territory. That the fishermen of all kinds have been taking fish and oysters in said "Mississippi sound" during all of this long period, and have been governed, as well as all others using those waters, by the laws and jurisdictions of the Mississippi territory and the State of Mississippi and the local authorities in said coast counties. And, your orator alleges and charges the truth to be, that there has never been any adverse claim known to her by the State of Louisiana with reference to the exercise of jurisdiction and sovereignty over those waters until the aforesaid controversy out of which this litigation arose in January, 1901.

Your orator further shows that this said line was also recognized by the supreme court, and by the lower courts of Mississippi, and a judicial interpretation given by the said courts to the act of Congress admitting Mississippi in the recent case of *Leinhard et al. v. Harrison County*, decided by our supreme court, January 12, 1903, (not yet reported), in which controversy the issue was as to the center of the said county and measurements from the eighteen mile limit in the water were held to have been correctly made.

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IX.

Wherefore, your orator, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the court and your honors to grant to her your writ of subpoena, directed to the said State of Louisiana, and to William W. Heard, governor of the said State of Louisiana, and to Walter Guion, attorney general of the State of Louisiana, commanding and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

And upon final hearing may it please your honors to adjudge



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and decree that the boundary line dividing the States of Mississippi and Louisiana is the line which, beginning at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the gulf of Mexico, runs westwardly with the meanderings of the shore six leagues always therefrom until said line reaches and touches the real mainland of Louisiana about two miles due west of the "Indian mound" and "Lake of the Mound," and thence in an almost due northward direction along and on the high tide mark of the said Louisiana mainland to Mississippi sound at or near Nine Mile bayou, and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern, or eastern junction of Pearl river with Lake Borgne, and thence from said point due north to the said Pearl river; that the said line be located and permanently bouyed at the joint expense of the two States; that the full title and sovereignty over all the islands and the land under the waters north and east of the said line so established be decreed and adjudged to be in the State of Mississippi, and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein, and your orator humbly prays for such other and further relief, preliminary and final, as to the court may seem meet and proper, and which the facts of the case may require, and for costs of suit.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

MONROE McCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

155 THE STATE OF MISSISSIPPI, }
Hinds County. }

Personally came and appeared before me the undersigned authority in and for said county and State, Andrew H. Longino, who on oath states that he is the governor of the State of Mississippi; that he has read the foregoing answer and cross-bill and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

ANDREW H. LONGINO.

Sworn to and subscribed before me this 7th day of October, A. D. 1903.

GEO. C. MEYERS,
Clerk of Supreme Court.

(Here follows map marked page 156.)

157 (Endorsed:) Supreme Court U. S. October term 1903.
Term No. 11, original. State of Louisiana, complainant, vs.
State of Mississippi. Answer and cross-bill of the State of Mississippi.
Filed October 13, 1903.

158 And on the same day, to wit, on the 13th day of October,
A. D. 1903, the following entry appears of record, viz:

159 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	}	No. 11, Original, October Term, 1903.
vs.		
THE STATE OF MISSISSIPPI.		

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted the complainant to file answer to the cross-bill herein within sixty days.

October 13th, 1903.

160 And afterwards, to wit, on the 19th day of October, A. D. 1903, the following entry appears of record, viz:

161 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	}	No. 11, Original, October Term, 1903.
vs.		
THE STATE OF MISSISSIPPI.		

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted to file stipulation to correct answer and cross-bill herein.

October 19th, 1903.

162 And on the same day, to wit, on the 19th day of October,
A. D. 1903, the stipulation to correct answer and cross bill
was filed in the words and figures following, viz:

163 In the Supreme Court of the United States.

LOUISIANA, Complainant,	}	Original, No. 11.
vs.		
MISSISSIPPI, Defendant.		

Agreement.

It appearing that at the end of line 14 of paragraph VIII, page 19, of the answer and cross bill filed in this cause, the printer inadvertently omitted the word "other," it is hereby mutually agreed

by the parties to this cause, through their respective counsel, that said word should be read at said place, and the clerk of this honorable court is respectfully requested to write it at said place in the original and all of the copies filed.

Witness our signatures this the 10th day of October, 1903.

THE STATE OF LOUISIANA,
Complainant and Cross Defendant,
By WALTER GUION, Attorney General.

JOHN DYMOND, JR.,
ALEXANDER PORTER MORSE,
Of Counsel for the State of Louisiana.

THE STATE OF MISSISSIPPI,
Defendant and Cross Complainant,
By WILLIAM WILLIAMS,
Attorney General.

MONROE McCLURG,
HANNIS TAYLOR,
Of Counsel for the State of Mississippi.

(Endorsed :) No. 11 original Supreme Court of the United States State of Louisiana vs. State of Mississippi Agreement.

(Endorsed :) Supreme Court U. S. October term, 1903. Term No. 11 original. State of Louisiana, complainant, vs. State of Mississippi. Stipulation to correct answer and cross bill Filed Oct. 19th 1903


164 And afterwards, to wit, on the 5th day of November, A. D. 1903, an appearance for defendant was filed in the words and figures following, viz :

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	} No. 11, Orig'l, October Term, 1903.
STATE OF MISSISSIPPI.	

The clerk will enter my appearance as counsel for the defendant.
(Name :) HANNIS TAYLOR,
(P. O. address :) Washington, D. C.

 NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed :) Supreme Court U. S. October term, 1903 Term No. 11, orig'l Appearance for deft Filed Nov. 5, 1903

165 And afterwards, to wit, on the 7th day of December A. D. 1903, a motion for leave to file general replication and answer to cross bill was filed in the words and figures following, viz :

166 Supreme Court of the United States, October Term, 1903.

THE STATE OF LOUISIANA, Complainant,	{	Original, No. 11. In Equity.
vs. THE STATE OF MISSISSIPPI, Respondent.		

Motion for Leave to File General Replication and Answer to Cross-bill.

And now comes the said complainant by its solicitor, Walter Guion, attorney general of the State of Louisiana and counsel for complainant, and respectfully asks this court for leave to file its general replication and answer to cross-bill, herewith submitted, in the above entitled cause,

December 7th, A. D. 1903.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
F. C. ZACHARIE,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
Of Counsel.

(Endorsed :) Supreme Court, United States, October term 1903. Original No. 11 State of Louisiana, complainant, vs. State of Mississippi, respondent Motion for leave to file general replication and answer to cross-bill Walter Guion attorney general of Louisiana, John Dymond, Jr., F. C. Zacharie, Albert Estopinal, Jr. Alexander Porter Morse, of counsel.

167 (Endorsed :) Supreme Court U. S. October term, 1903. Term No. 11, original. The State of Louisiana, complainant, vs. The State of Mississippi Motion for leave to file general replication and answer to cross-bill. Filed Dec. 7, 1903.

168 And on the same day, to wit, on the 7th day of December A. D. 1903, the following entry appears of record, viz :

169 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	{	No. 11, Original, October Term, 1903.
vs. STATE OF MISSISSIPPI.		

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted to file a general replication and

an answer to the cross-bill herein, and on motion of Mr. Hannis Taylor, of counsel for the defendant, leave is hereby granted to file exceptions to the answer to the cross-bill within forty days.

December 7th, 1903.

170 And on the same day, to-wit, on the 7th day of December A. D. 1903, a general replication and answer to cross bill was filed in the words and figures following, viz :

171 Supreme Court of the United States, October Term, 1903.

THE STATE OF LOUISIANA, Complain-	}	Original, No. 11. In Equity.
ant,		
<i>versus</i>		
THE STATE OF MISSISSIPPI, Respond-		
ent.		

General Replication and Answer to Cross Bill.

172 Supreme Court of the United States, October Term, 1903.

THE STATE OF LOUISIANA, Complain-	}	Original, No. 11. In Equity,
ant,		
<i>versus</i>		
THE STATE OF MISSISSIPPI, Respond-		
ent.		

General Replication and Answer to Cross Bill.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States :

The State of Louisiana, repliant, saving and reserving unto herself all advantage of exception to the insufficiencies of the answer of the State of Mississippi herein, for replication thereunto says: That she will aver and prove her bill of complaint in this cause to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied to; all of which this repliant is and will be ready to aver and prove as this honorable court shall direct, and prays as in and by her said bill she has already prayed.

And further, the said State of Louisiana, now and at all times hereafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to any errors, uncertainties, or other imperfections contained in so much of the answer of the State of Mississippi, herein, as may be deemed a cross bill herein, and also the right to make further answer thereto, if the same should become necessary, for answer to said cross bill of the State of Mississippi, says she denies:

I.

That the fixing of the southern boundary of the State of Mississippi by section 2, chapter 23, of the acts of the Congress of the United States, creating said State and approved March 1, 1817, found in vol. 3, page 348, of the Statutes at Large, quoted in full in paragraph one (1) of respondent's cross bill, certainly and indisputably fixed and designated said southern boundary, as alleged and averred by respondent, but repliant avers that if the construction of said act sought to be placed thereon by respondent be true, and that act did purport so to do, which is denied, repliant avers that said act in said respect would be in violation of, and contrary to the Constitution of the United States, in as much as said act would include in the boundaries of the State of Mississippi the islands, adjacent waters, and territory in dispute and controversy in this cause, which islands, adjacent waters and territory had theretofore been by the act of Congress, chapter fifty of the United States Statutes at Large, volume 2, page 701, approved April 8th, 1812, admitting the State of Louisiana into the Union, included within the boundaries of the State of Louisiana, by the provisions of said act, and repliant avers and alleges that if the act of Dec. 10, 1817, admitting the State of Mississippi into the Union, is to be construed and interpreted as covering and including the said islands adjacent

174 waters, and the territory in dispute and in controversy herein, that said act is void, unconstitutional and of no effect in so far as the islands, territory and waters in dispute and controversy herein, are concerned, for the reason that said act is and would be in violation of, and contrary to, section 3, article IV, of the Constitution of the United States, which section and article prohibit the transfer of any part of the territory of one State to another adjacent State without the consent of the legislature of the two States, which consent the legislature of the State of Louisiana has never granted or given, for the reason that the act of Congress of 1812, admitting the State of Louisiana into the Union, placed said territory herein in controversy within the boundary lines, and under the sovereignty and jurisdiction of the State of Louisiana.

II.

Repliant further answering, especially denies that the claim set forth in the second paragraph of respondent's cross bill, that the islands, and territory herein in dispute and controversy belong to, or are included within the lawful boundaries of the State of Mississippi for the reason set forth in paragraph one (1) of this answer, and repliant further especially and particularly denies that the limits of the State of Louisiana are to be defined and delimited from the "mainland" of said State, as claimed by respondent, but are to be defined, determined and delimited from the islands, as the "coast" of the State of Louisiana.

III.

Repliant further answering to the cross bill of respondent, denies the allegations and averments contained in respondent's third (III) paragraph of the cross bill, but repellant avers and alleges on 175 the contrary that the southeastern boundary of the State of Louisiana, in so far as the territory in dispute and controversy herein is concerned, is governed and fixed by the act of admission of the State of Louisiana into the Union, in 1812, by which all islands within three leagues of the coast were included within said State, and the boundaries therein set forth must be taken and held as the true boundaries of the State of Louisiana, being prior in time to the boundaries of the State of Mississippi, fixed on the admission of that State into the Union on December 10, 1817, and for the additional reasons hereinbefore set forth in repellant's answer to the cross bill of respondent, in paragraphs one (1) and two (2) of this answer; and repellant further avers that there is now and always has been a well-defined and continuous coast line of the southeastern coast of the part of Louisiana herein in dispute and controversy, extending eastward as far as the eastern extremity of Isle a Pitre, intersected only by the several bayous found therein.

IV, V, and VI.

Repliant, further answering to paragraphs (IV) four, (V) five and (VI) six, of respondent's cross bill, denies the truth and correctness of the allegations thereof, except in so far as is hereinafter especially admitted, but repellant only admits that the act of Congress of May 14th, 1812, set forth in the (V) fifth paragraph of respondent's cross bill, was passed and enacted at that date, but repellant alleges and avers that said act only became a law on the 14th day of May, 1812, (14) fourteen days after the 30th of April, 1812, at which prior date the State of Louisiana had been admitted to the Union and its boundaries defined and delimited, and said act of May 14th, 1812, could not, and did not, change the boundaries

176 or territory of the State of Louisiana, for the reasons already hereinbefore set forth in this repellant's answer to the cross bill in paragraphs one (I), two (II) and three (III), of this answer. And that in truth and fact the southern portion of the said Mississippi territory as claimed by respondent was not even then in possession of the United States, and did not extend south of the thirty-first degree of north latitude, and did not reach or touch the gulf of Mexico or Mississippi sound, for it was only on February 12th, 1813, that the Congress of the United States, U. S. Statutes at Large, vol. 3, p. 472, passed "An act authorizing the President of the United States to take possession of a tract of country lying south of the Mississippi territory and west of the River Perdido." This act was not published until 1818. It declared that the country called West Florida, which lay west of the Perdido river, was not then in

possession of the United States, and the act was not published till 1818, evidently for fear of the effect its passage might have had on the government of Spain, with which the United States was then negotiating a treaty relative to that territory, as is similarly shown by the general resolutions on the relation of the United States to Spain, U. S. Statutes at Large, vol. 3, p. 471-472, approved January 15th, 1811, and March 3, 1811, but not published until after April 20, 1818, in which the President of the United States was specially instructed not to publish same unless he deemed it wise to do so.

VII.

Repliant further answering unto paragraph seven (VII) of respondent's cross bill, denies the averments and allegations therein set forth, and repellant avers and alleges in contradiction thereof that the acknowledgment of the true boundaries of the State
177 of Louisiana by the officers of the United States Government are binding as showing that the territory here in dispute and in controversy has always been considered by the Federal Government, and its officers, as being a part of the territory of the State of Louisiana, and repellant further alleges and avers that all the cartographers who have made maps of Louisiana and Mississippi from a date shortly after the acquisition of Louisiana by the United States, have placed and delineated on all of said maps from the year A. D. 1806, up to the present year, the territory in dispute herein as belonging to Louisiana, and forming a part of its territory, and repellant further alleges and avers that the government and officers of the State of Mississippi, and of the county of Hancock in said State, have repeatedly officially recognized the territory in dispute and controversy herein as the territory of, and belonging to, the State of Louisiana :

1st. On Hardee's geographical and statistical map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas, from recent surveys and investigations and officially compiled for the State of Mississippi, and paid for by appropriation from the treasury of the State of Mississippi, all under statutes of the State of Mississippi, which map was officially approved by the then governor of the State of Mississippi, in writing, on the face of said map, which official map was published and promulgated in the year 1868, and a second edition in 1872.

2nd. On the official map of the State of Mississippi, published in accordance with an act of the Mississippi State legislature, approved March 8th, 1882, by the Mississippi State board of immigration and agriculture, prepared under the direction of E. G. Wall, in
1883.

178 3rd. On a sectional map of Mississippi compiled from the records of the offices of the surveyor general and of the board of immigration and agriculture of the State of Mississippi, published by Rand, McNally & Co., in 1896, to be found in the office of

the clerk of the chancery and circuit courts of the county of Hancock in the State of Mississippi; and,

4th. A map of Hancock county, Mississippi, compiled by Leland Henderson of Mississippi from the records of the United States and Mississippi land offices, which map repliant is informed and believes was prepared for and approved by the board of supervisors of the county of Hancock, State of Mississippi, by virtue of the powers invested in said board by the laws of said State, and by divers other official maps prepared, approved, published and issued by competent authority of State and county officers of the State of Mississippi, and repliant avers that on all of said official maps of Mississippi, the islands, waters adjacent and territory here in dispute and controversy, are delineated and set forth as belonging to, and forming a part of, the territory of the State of Louisiana. Repliant further alleges and avers that if it be conceded, and this honorable court should so decide, that the islands and landed territory here in dispute are a part of the territory of the State of Louisiana, it follows that the land and soil underneath said waters, adjacent to said islands are the property of the State of Louisiana, and that said State has full jurisdiction and sovereignty over them. Repliant especially denies that the State of Mississippi has ever "exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union," as

alleged and averred by respondent in paragraph (VII) seven 179 of respondent's cross bill, but repliant especially alleges and avers the contrary; that the State of Mississippi has never exercised in any manner whatsoever, any sovereignty over said islands and waters, and repliant further avers and alleges on information and belief that the citizens of Mississippi have never enjoyed the same for lawful purposes, that is, the taking and obtaining of oysters from said disputed territory, but that it is only in the last few years, when the citizens of Mississippi had, by improvident, careless, and wasteful use of Mississippi's own oyster beds, destroyed or greatly depleted the same, that the said citizens of Mississippi began to trespass on the islands and waters, here in controversy, by taking oysters therefrom, and began to claim any rights in and to the islands and waters here in controversy, that said claims and said trespasses have been resisted by the officers of the State of Louisiana, who at all times have resisted said claims of the State of Mississippi, and the said citizens of Mississippi have been warned off from, and forbidden to use the oyster beds in said territory by said officers of the State of Louisiana. Repliant further avers and alleges that all of said citizens of Mississippi using and trespassing on the territory in controversy herein, always have called and designated, and do now call the territory here in controversy as "the Louisiana marshes" and have no other name for the same.

VIII.

Repliant further answering to the (VIII) eighth paragraph of respondent's cross bill, alleges: That if, as stated, in that paragraph of respondent's cross bill, "the Congress of the United States, in the early history of the Republic, in dealing with the Gulf coast or shore and carving States out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and as is shown by the several acts of Congress," then reppliant further avers and alleges that a similar unfamiliarity existed in the minds of Congress when it erected the territory of Mississippi into a State in 1817, and that if respondent's theory of construction of the acts of Congress be true, that Congress intended to comprise within the boundary of the State of Mississippi the territory in dispute herein as alleged by respondent, which, however, is denied, then it was on account of said unfamiliarity that Congress failed to recognize the fact that in placing within the jurisdiction and boundaries of that new State "*all the islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne,*" that Congress, in the act of admission of Louisiana in 1812, five years before had fixed a part of the southeastern boundary of the State of Louisiana as "bounded by said Gulf to the place of beginning, *including all islands within three leagues of the coast,*" and Congress thus failed to realize that in fixing the southern boundary of the State of Mississippi it was including on the western end of the Gulf boundary, as it approached Pearl river, islands and waters previously put and placed within the southeastern boundaries of the State of Louisiana in 1812, thus producing a conflict by the boundaries of both of the two States covering and including a part of the same territory. Reppliant avers and alleges that if, owing to said unfamiliarity of Congress with the geography of the new acquisitions of territory, it, by mistake, attempted to take away from Louisiana a portion of its territory previously allotted to it by the act of Congress of 1812, such would be in violation of section three (3), article IV, of the Constitution of the United States.

181

IX.

Repliant further answering to paragraph (IX) nine of respondent's cross bill, alleges and avers that if the allegations of fact in said paragraph contained, in so far as they relate to the organizations of the Gulf Coast counties of the State of Mississippi by the legislature of that State, and also the sections of the Revised Code of Mississippi and other codifications of the laws of Mississippi, as therein recited, and that the supreme court of Mississippi did decide as therein recited in the case of *Leinhard et al. vs. Harrison County*, as alleged by respondent, be true, reppliant especially denies that the State of Mississippi, or the local authorities of the Gulf Coast counties of the State of Mississippi, have ever exercised control, juris-

diction or sovereignty over the territory herein in controversy, and repliant especially denies that the codes, laws, codifications of the State of Mississippi, and the decision of the supreme court of Mississippi cited by respondent, have any application, to, or binding effect on, this repliant, as the State of Louisiana was not in any way, nor were its citizens, parties to said proceedings, and they were all *res inter alios acta*, and neither the legislative nor judicial branch of the government of the State of Mississippi did have, or could have any jurisdiction over the sovereign State of Louisiana in any way, much less to deprive said State of any of its rights, claims or territory; and in all other respects, as to the allegations of fact contained in said paragraph IX, repliant specially denies the truth thereof.

And the State of Louisiana, as a part of her answer to said cross bill, refers to the original bill herein, and makes every averment thereof a part of this answer, the same as if said averments had been set out at length herein.

And the State of Louisiana for further answer to said cross
182 bill says to any matter or thing in said cross bill contained not herein answered unto, the same is hereby specifically denied.

Wherefore the State of Louisiana prays for relief as in her original bill prayed for; that the respondent's cross bill be dismissed and for all proper relief in the premises, and for costs of suit.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
F. C. ZACHARIE,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
Of Counsel.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the governor of the State of Louisiana; that he has read the foregoing replication and answer to the cross bill of the State of Mississippi, and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

W. W. HEARD, Governor.

Sworn to and subscribed before me, this 30th day of November, 1903.

[SEAL.]

ALVIN EDWARD HEBERT,
Notary Public.

183 (Endorsed :) Supreme Court, U. S. October term, 1903.
Term No. 11, original. State of Louisiana, complainant, *vs.*
State of Mississippi. General replication and answer to cross bill.
Filed December 7, 1903.

184 And afterwards, towit, on the first day of March A. D. 1904,
the following entry appears of record, viz :

185 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	} No. 11, Original, October
<i>vs.</i>	
STATE OF MISSISSIPPI.	} Term, 1903.

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted to file a stipulation of counsel for the appointment of commissioners to take and report the testimony to be given in this case and fixing the time for taking said testimony, and a further stipulation of counsel as to the authentication of such maps as may be introduced in evidence. And, in pursuance of said first mentioned stipulation, it is further ordered that A. H. Longino, Esq., of the State of Mississippi, and Frank H. Mortimer, Esq., of the State of Louisiana, be, and they are hereby, appointed commissioners for the purpose of taking the testimony herein and reporting the same to the court, with authority and power to take and report such testimony separately and independently. The testimony on behalf of the complainant to be taken during the months of March and April, 1904, and on behalf of the defendant during the months of May, June and July, 1904, and the complainant shall have from August 1st to September 15th, 1904, to offer testimony in rebuttal, and the defendant to have the right to take additional evidence on and new matter brought out by the complainant in rebuttal up to the first day of October, 1904.

March 1st, 1904.

[Endorsed :] Supreme Court of the United States. October term, 1903. Term No. 11, original. Order. Filed M'ch 1, 1904.

186 And on the same day, towit, on the first day of March A. D. 1904, the motion of complainant for leave to file stipulation for appointment of commissioners &c. was filed in the words and figures following, viz :

187 In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA }
 vs. } Original, No. 11.
 STATE OF MISSISSIPPI. }

Motion for Leave to File Stipulation.

Now comes counsel for complainant and moves the honorable court for leave to file stipulation of counsel for appointment of commissioners, and for order fixing dates for beginning and closing the taking of testimony.

Respectfully submitted,

WALTER GUION,
 Attorney General of Louisiana.
 ALEXANDER PORTER MORSE,
 Counsel for Complainant.

188 In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA }
 vs. } Original Bill, No. 11.
 STATE OF MISSISSIPPI. }

The pleadings in this case having been made up and the case being now at issue between the two States, it is agreed by respective counsel that the court grant leave to either State to file the following stipulation as to taking of the testimony and evidence ;

First. The depositions may be taken by either party before Hon. A. H. Longino of Mississippi, or Frank H. Mortimer of Louisiana upon ten days' written notice to the attorney general of either State given by the attorney general of the other State.

Second. Louisiana shall take her testimony and evidence during the months of March and April 1904, and Mississippi shall take hers during the months of May, June and July 1904, while Louisiana shall have August and up to the 15th September 1904 to offer rebuttal testimony, with the right given to the State of Mississippi to take any additional evidence up to the 1st October 1904 on any new matter brought out by the State of Louisiana ; it being understood that all testimony and evidence introduced by both States shall be closed on or before the first day of October 1904.

Third. Duly authenticated copies of any records, maps or official documents may be filed by either party with either commissioner hereby agreed upon, as evidence in the cause upon furnishing the adverse party copies thereof subject to exception to their competency

as evidence; it being the duty of said commissioners to send
189 up said evidence as a part of the record of the case to the Supreme Court of the United States.

It is agreed that Hon. A. H. Longino and Frank H. Mortimer shall be commissioned by the court to take the testimony as herein indicated, and that they shall have authority to administer oaths to certify to depositions, and to perform all acts necessary to carry this agreement into full effect, which said act shall be accepted by both States as official and binding, and in the event that either should die, refuse to act or become incapacitated, the attorney general of either State shall have the right to name his successor clothed with all the duties and powers herein agreed upon.

Fourth. That all maps or plats obtained from any Federal or State office or department of the Federal or State governments of the United States or from any office of any parish or county in any State of the U. S. may be offered in evidence without any authentication other than the certificate of the officer in whose office the same may be of record, on file or deposited with him, subject to such objections as may be urged to the competency of the evidence.

Fifth. That each State shall pay the expense of its own commissioner and of all witnesses summoned on behalf of each State respectively, and that all witnesses shall be paid at the same rate as witnesses in cases in the United States district court, to-wit: the sum of \$1.50 per day for each day while in actual attendance, and mileage at five cents per mile going from and returning to their residences, to be determined by the mileage between such residences and the place where the testimony is given; provided, on final judgment the court may adjudge the costs.

It is further agreed that the court may fix the compensation for the commissioners for either State to take the testimony at ten dollars per day and all actual expenses. The commissioner for each State is authorized to employ a competent stenographer at the expense of each State, who shall furnish the commissioner with three type written copies of the testimony so taken, one of said copies to be furnished to the attorney general of each of the States of
190 Louisiana and Mississippi, and the other to be filed by the commissioner as evidence in the case, after verification and correction by him, with the clerk of the Supreme Court of the United States.

Witness our signatures this the second day of February 1904 at the city of New Orleans.

WM. WILLIAMS,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

HANNIS TAYLOR,
Of Counsel for Defendant.
ALEXANDER PORTER MORSE,
Of Counsel for Complainant.

(Endorsed :) In the Supreme Court of the United States October term, 1903 State of Louisiana, complainant, *vs.* State of Mississippi, defendant, Original No. 11 1 Motion for leave to file stipulation of counsel, and 2, stipulation of counsel for appointment of commissioners, and for order fixing dates for beginning and closing of testimony.

(Endorsed :) Supreme Court U. S. October term, 1903. Term No. 11, Original State of Louisiana, complainant, *v.* State of Mississippi Motion of complainant for leave to file stipulation for appointment of commissioners and stipulation for appointment of commissioners and for order fixing dates for beginning and closing of testimony. Filed March 1, 1904.

191 And on the same day to wit, on the first day of March, A. D. 1904, a motion for leave to file an additional stipulation &c. was filed in the words and figures following, viz :

192 Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA	} Original, No. 11.
<i>vs.</i>	
STATE OF MISSISSIPPI.	

Motion for Leave to File Additional Stipulation.

Now comes counsel and moves the honorable court for leave to file additional stipulation entered into between counsel for complainant and defendant on the 12th day of February, 1904.

ALEXANDER PORTER MORSE,
Of Counsel for Complainant.

Washington, Feb. 29, 1904.

193 In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA	} Original Bill, No. 11.
<i>vs.</i>	
STATE OF MISSISSIPPI.	

In addition to the stipulations contained in the agreement entered into on the 2d day of February 1904 between the State of Louisiana, represented by Walter Guion, the attorney general of said State, and the State of Mississippi, represented by William Williams, attorney general of said State, it is further additionally agreed and understood as follows, to wit :

1st. That all maps printed, lithographed or otherwise published for common circulation by map publishers in the United States and

containing on their face the names of the publishers thereof, shall be admitted in evidence without any other proof of authentication for the purpose of proving *rem ipsam*, leaving the effect of such evidence to be finally determined by the court.

2nd. That where Federal or State official maps are printed, lithographed or otherwise published for general circulation or distribution, and bearing on their face a title or titles showing that they were prepared and published by State or Federal officers of the United States or of any State thereof, it shall not be necessary to furnish additional authentication of said maps by such officer or officers.

Witness this 12th day of February, 1904.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

HANNIS TAYLOR,
Of Counsel for Defendant.
ALEXANDER PORTER MORSE,
Of Counsel for Complainant.

(Endorsed :) In the Supreme Court of the United States. State of Louisiana, complainant, *vs.* State of Mississippi, defendant. Original No. 11. 1 Motion for leave to file additional stipulation and 2 additional stipulation of counsel in respect to the authentication of maps.

(Endorsed :) Supreme Court U. S. October term, 1903. Term No. 11 (original). State of Louisiana, complainant, *v.* State of Mississippi. Motion for leave to file additional stipulation and additional stipulation in respect to the authentication of maps. Filed March 1, 1904.

194 And afterwards, to wit, on the 6th day of May, A. D. 1904, a request of counsel for defendant for appointment of Wm. D. Bullard as commissioner was filed in the words and figures following, viz :

195 Department of Justice, Attorney General's Office—William Williams, Attorney General ; J. N. Flowers, Ass't.

JACKSON, Miss., April 23rd, 1904.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States :

We have been notified that the Hon. A. H. Longino, who was commissioned as a commissioner to take testimony in the case of Louisiana *vs.* The State of Mississippi, now pending in the Supreme Court of the United States, has declined to serve as such commissioner.

Now, therefore, we, William Williams, attorney general of the State of Mississippi, Monroe McClurg and Hannis Taylor, of counsel for the State of Mississippi, under the terms of agreement executed by and between Walter Guion, attorney general of Louisiana, and William Williams, attorney general of the State of Mississippi, on the 21st day of February, 1904, now on file in the Supreme Court of the United States, do hereby request that the Honorable William D. Bullard, of Scranton, Mississippi, be commissioned by the Supreme Court as a commissioner to take testimony in the said case of Louisiana vs. The State of Mississippi, now pending in the said court in place of the said A. H. Longino, who has declined to serve as such commissioner.

Most respectfully, WILLIAM WILLIAMS,
Attorney General of the State of Mississippi.

MONROE McCLURG, Of Counsel.

HANNIS TAYLOR, Of Counsel.

(Endorsed :) Supreme Court U. S. October term, 1903. No. 11, original. State of Louisiana complainant vs. State of Mississippi Request of counsel for defendant for appointment of Wm. D. Bullard as commissioner to take testimony on behalf of Mississippi in place of A. H. Longino, declined. Filed May 6, 1904.

196 And afterwards, towit, on the 7th day of May, A. D. 1904, consent of counsel for complainant to appointment of Wm. D. Bullard as commissioner was filed in the words and figures following, viz:

197 To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

We have been notified that the Hon. A. H. Longino, who was commissioned as a commissioner to take testimony in the case of Louisiana vs. The State of Mississippi, now pending in the Supreme Court of the United States, has declined to serve as such commissioner.

Now, therefore, we, William Williams, attorney general of the State of Mississippi, Monroe McClurg and Hannis Taylor, of counsel for the State of Mississippi, under the terms of agreement executed by and between Walter Guion, attorney general of Louisiana, and William Williams, attorney general of the State of Mississippi, on the 21st day of February, 1904, now on file in the Supreme Court of the United States, do hereby request that the Honorable William D. Bullard, of Scranton, Mississippi be commissioned by the Supreme Court as a commissioner to take testimony in the said case of Louisiana vs. The State of Mississippi, now pending in the said

court in place of the said A. H. Longino, who has declined to serve as such commissioner.

Most respectfully submitted this the 2nd day of May, 1904.

WM. WILLIAMS,
Attorney General of Mississippi.

MONROE McCLURG, Of Counsel.
HANNIS TAYLOR, Of Counsel.

I hereby consent to the above.

WALTER GUION,
Attorney General of Louisiana.

(Endorsed :) Supreme Court U. S. October term, 1903. Term No. 11 orig'l. State of Louisiana, complainant, vs. State of Mississippi. Consent of counsel for complainant to appointment of Wm. D. Bullard as commissioner to take testimony. Filed May 7, 1904.

198 And afterwards, to wit, on the 16th day of May, A. D. 1904, the following order appears of record, viz :

199 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,	} No. 11, Original, October Term, 1903.
vs.	
THE STATE OF MISSISSIPPI.	

It appearing to the court that A. H. Longino, Esq., who was heretofore, to wit, on March 1st, 1904, appointed a commissioner for the purpose of taking the testimony herein and reporting the same to the court, has declined to serve as such commissioner, now, on suggestion of counsel for the defendant, it is ordered by the court that William D. Bullard, Esq., of Scranton, Mississippi, be, and he is hereby, appointed a commissioner in the place of said A. H. Longino, Esq.

May 16th, 1904.

(Endorsed :) Supreme Court of the United States. October term, 1903. Term No. 11, original. Order appointing commissioner, &c. Filed May 16, 1904.

200 And afterwards, to wit, on the 24th day of October, A. D. 1904, the following entry appears of record, viz :

201 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, { No. 11, Orig'l, October Term,
vs. { 1904.
STATE OF MISSISSIPPI.

Mr. F. C. Zacharie, of counsel for the complainant, submitted to the consideration of the court a motion for an order granting leave to the parties to this cause to present the maps offered in evidence in this cause in atlas form instead of reproducing the same.

October 24, 1904.

202 And on the same day, to wit, on the 24th day of October, A. D. 1904, a motion in regard to the reproduction of maps to be filed in evidence was filed in the words and figures following, viz :

203 Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA, Complainant, {
versus { Original, No. 11.
STATE OF MISSISSIPPI, Respondent. }

Walter Guion, attorney general.

204 EXHIBIT P-11.

In the Honorable the Supreme Court of the United States, October Term, 1904.

THE STATE OF LOUISIANA, Complainant, { Original, No. 11. In
versus { Equity.
THE STATE OF MISSISSIPPI, Respondent. }

To the Honorable William Williams, attorney general of the State of Mississippi, and to the State of Mississippi, represented by Honorable William Williams, attorney general of said State, herein :

Take notice that this honorable court will be moved, for and on behalf of the complainant, The State of Louisiana, on the 24th day of October, 1904, that complainant, The State of Louisiana, and respondent, The State of Mississippi, in the preparation of their evidence for filing and hearing in this cause, will be allowed to respectively offer in separate atlas form, each, the maps offered by them in the preparation of this cause before the commissioners authorized to take testimony herein, to be prepared under the supervision and direction of the respective commissioners of each State, said atlases to be received in lieu of the twenty-five

(25) copies of the maps usually required by the rules of this honorable court in cases on appeal, or by writ of error, for consideration in the trial of this cause, and for an order in conformity with said motion, as the whole will more particularly and fully appear by a copy of the motion to be filed, which accompanies this notice and is annexed to the same.

New Orleans, October 8th, 1904.

WALTER GUION,
Attorney General of Louisiana.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans. }

On the 11th day of October, 1904, I served the within notice, together with the annexed motion and exhibits, on William Williams, attorney general of the State of Mississippi, of counsel for the State of Mississippi in this cause, by handing copies of the same to him personally, in his, the attorney general's office, in the city of Jackson, and the State of Mississippi.

F. C. ZACHARIE.

Sworn to and subscribed before me, this 12th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans.

ALVIN EDWARD HEBERT,
Notary Public.

206 Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA, Complainant, }
versus } Original, No. 11.
STATE OF MISSISSIPPI, Respondent. }

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

On motion of The State of Louisiana, complainant, represented herein by Walter Guion, attorney general of the State of Louisiana, and,

Upon suggesting and showing to this honorable court that the State of Louisiana has already disbursed in costs, in this proceeding, the sum of twenty-seven hundred and fifty-two and 16-100 (\$2752.16) dollars, as will more fully appear from Exhibit P-1, hereto annexed and made part of this motion, and has incurred a further expense for costs in this suit, not yet paid, amounting to twenty-two
207 hundred and forty-three and 58-100 (\$2243.58) dollars, as will more fully appear from Exhibits P-2, P-3, P-4, and P-5,

hereto annexed and made part of this motion, and that the record, as made up, will embody the following evidence on the part of the State of Louisiana, to-wit:

Fourteen hundred and fifty (1450) legal cap typewritten pages of testimony;

Seventy-seven (77) maps of various sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth,

All of which will more fully appear from Exhibits P-6 and P-7 hereto annexed and made part of this motion.

And upon suggesting and showing to this honorable court that copies of all such maps, documents, testimony, and other evidence, have been regularly furnished to the State of Mississippi as the same were, from time to time, offered, for filing by said commissioner, as will more fully appear from Exhibit P-8, hereto annexed and made part of this motion; and,

Upon further suggesting and showing to this honorable court that it is estimated by the clerk of this honorable court that the printing of the testimony and other evidence, except maps, of the State of Louisiana in the number of copies usually required in cases of appeal and writs of error, would involve an expense of about two thousand (\$2000) dollars, as will more fully appear from Exhibit P-9 hereto annexed and made part of this motion, and making a total amount of expense already incurred, and to be necessarily incurred, of six thousand, nine hundred & ninety five (\$6,995) dollars; and 74/100

Upon further suggesting and showing to this honorable court that it is estimated that to reproduce twenty-five (25) copies of the seventy-seven (77) maps offered in evidence by the State of Louisiana in this cause, would involve an additional expense of about seven thousand (\$7000.00) dollars, an amount almost prohibitive in its nature and for which latter item no adequate and sufficient appropriation has been made by the legislature of the State of Louisiana, it in fact being impossible to reproduce faithful and correct copies of some of said maps owing to their age and condition, all of which will more fully appear from Exhibit P-10, hereto annexed and made part of this motion; and

Upon further suggesting and showing to this honorable court that the ends of justice would be as well subserved by permitting each State, complainant and respondent herein, to offer one copy of each of its maps, all of the maps of the State of Louisiana to be bound in one atlas, and all of the maps of the State of Mississippi to be likewise bound in one atlas, for use in the trial of this cause.

And upon further suggesting and showing to this honorable court that the State of Mississippi, through its attorney general, has been duly notified of the intention of the State of Louisiana, through counsel, to make this motion and application as will more fully ap-

pear from Exhibit P-11, hereto annexed and made part of this motion.

And thereupon the State of Louisiana moves that it be ordered that the States of Louisiana and Mississippi be respectively permitted to, each, offer its maps in atlas form, an atlas for each State, the respective atlases to contain one copy of each of the maps offered in evidence herein by that State, said atlases of maps to be prepared by the respective commissioners appointed by this honorable court, and to be returned to this honorable court by the said respective commissioners when making returns under their commissions, and the clerk of this honorable court be directed to receive said atlases as being a full compliance with the requirements of this honorable court on the subject of this map evidence in preparing the record in this cause for trial and submission.

WALTER GUION,
Attorney General of Louisiana.

EXHIBIT P-1.

Statement of Amount Disbursed for Costs of Court in the Suit of
The State of Louisiana vs. The State of Mississippi.

1903, July	21. A. P. Morse, services as ass't counsel.....	\$100 00
" Dec.	16. American Printing Co. for printing briefs	15 00
1904, March	18. Walter Guion, for copies of maps, etc...	287 34
" April	1. Walter Guion, for costs.....	28 00
" "	2. V. Loisel, U. S. marshal serving sub- pœnas.....	50 00
" April	4. Bank of Baton Rouge, costs.....	240 10
" "	15. F. H. Mortimer, com. witnesses's fees...	50 00
" April	16. Walter Guion, for four bills.....	46 70
" "	18. W. C. Hodgkins, fees as expert.....	200 00
" April	22. F. H. Mortimer costs and expenses.....	100 00
" April	23. O. M. Tennison, services.....	40 00
" "	25. John Dymond, Jr., balance on bill.....	34 69
" April	29. E. J. Bellocq, photographic work.....	70 80
" May	5. A. C. Gozales, extracts from assess- ment roll.....	25 00
" May	7. George de Armas, services	25 00
" "	23. Miss Bessie Mead, for maps.....	24 50
" July	19. L. Graham & Co., for mounting maps...	9 50
" July	19. Romanski Photo Engraving Co., for maps	25 00
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1904, July	19. Romanski Photo Engraving Co., for halftone Majestic	3 05

1904, July	19. F. H. Mortimer, commission mileage and expenses.....	60 89
" July	25. Hibernia Bank & Trust Co., money advanced.....	333 89
" Aug.	1. L. N. C. Spotorno for articles furnished..	36 50
" Aug.	16. Eugene Dietzan Co.....	1 80
" "	19. L. nat. bank, bill of F. C. Zacharie.....	30 00
" Aug.	19. J. D. St. Alexandre, notarial work.....	189 50
" Aug.	30. F. H. Mortimer, fees and mileage for witnesses	75 00
" Aug.	30. E. J. Bellocq, for maps	11 80
" Sept.	6. V. Loisel, U. S. marshal, serving subpoenas	6 00
" Sept.	9. E. J. Bellocq, maps.....	6 60
" "	9. E. Hooker, fees and mileage as witness..	19 50
" Sept.	9. Stephen Maloche, fee and mileage as witness.....	9 60
" Sept.	13. R. H. Carter, serving subpoenas.....	50 00
" Sept.	13. R. H. Carter services stenographer.....	500 00
" Sept.	14. E. Wentzel, witness.....	9 60
" Oct.	1. O. H. Tennison, services.....	5 00
	E. H. Bellocq, maps.....	31 80
		<hr/>
		\$2752 16

I hereby certify the above to be a correct statement of amounts paid out for costs of court in the suit of The State of Louisiana *versus* The State of Mississippi, as shown by the records of my office to October 1, 1904, inclusive.

MARTIN BEHRMAN, Auditor.

Baton Rouge, Oct. 7, 1904.

EXHIBIT P-2.

STATE OF LOUISIANA, {
Parish of Orleans. }

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, this State, duly commissioned and qualified, *personally came and appeared*: Mr. Reginald H. Carter, official stenographer for the State of Louisiana, in the suit of The State of Louisiana *vs.* State of Mississippi, No. 11 original, of the docket of the Supreme Court of the United States, who, being by me first duly sworn, deposes and says, that his bill for stenographic services, rendered the State of Louisiana in said cause, amounts to the sum of nineteen hundred and fifty-six (\$1956.00) dollars, on which there is a balance due him of twelve hundred and fifty (\$1250.00) dollars.

R. H. CARTER.

Sworn to and subscribed before me, this 8th day of October, 1904

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
Notary Public.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, Alvin Edward Hebert, a notary public, for the parish of Orleans, this State, duly commissioned and qualified, *personally came and appeared*: Frank H. Mortimer, appointed by the Supreme Court of the United States as commissioner to take the testimony and evidence on the part of The State of Louisiana in the suit of The State of Louisiana vs. State of Mississippi, No. 11, original of the docket of the Supreme Court of the United States, who being duly sworn, deposes and says, that there is due him by the State of Louisiana for services rendered in said cause, about two hundred and sixty (\$260.00) dollars.

FRANK H. MORTIMER.

Sworn to and subscribed before me, this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
Notary Public.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans. }

Before me, the undersigned authority, personally came and appeared Walter Guion, attorney general of the State of Louisiana, who, on being duly sworn, declares that, in addition to the amount already paid by the State of Louisiana, as costs in the suit now pending in the honorable the Supreme Court of the United States, wherein The State of Louisiana is plaintiff, and The State of Mississippi defendant, as shown by the statement of the Honorable Martin Behrman, auditor of the State of Louisiana, dated October 7th, 1904, and the amount due Commissioners Mortimer and Bullard, and R. H. Carter, stenographer, there is a further and additional amount of \$309.15 due by the State of Louisiana for copies of maps and coloring of same, and for expenses of special counsel employed by the State of Louisiana in visiting Washington, D. C., for the purpose of making a special motion in behalf of the State of Louisiana, to be

permitted to offer in evidence the maps produced by the State of Louisiana in atlas form, which amount of three hundred and nine dollars and fifteen cents (\$309.15) is yet to be paid by the State of Louisiana on the approval of declarant.

WALTER GUION.

Sworn to and subscribed before me this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans.

ALVIN EDWARD HEBERT,
Notary Public.

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EXHIBIT P-5.

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, State of Louisiana, duly commissioned and qualified, *personally came and appeared*: Mr. Wm. M. Jungblut, auditor of the *Oyster Commission of Louisiana*, who being, by me, first duly sworn, deposes and says:

That the *Oyster Commission of Louisiana* advanced the sum of four hundred and twenty-four and 43-100 (\$424.43) dollars, in court costs in the boundary suit of The State of Louisiana, complainant, *vs.* The State of Mississippi, respondent, No. 11, original of the docket of the Supreme Court of the United States, and that the said sum has not yet been reimbursed to the said *Oyster Commission of Louisiana* by the State of Louisiana.

W. M. JUNGBLUT.

Sworn to and subscribed before me, this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans.

ALVIN EDWARD HEBERT,
Notary Public.

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EXHIBIT P-6.

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

I, Frank H. Mortimer, commissioner by appointment of the Supreme Court of the United States, in the suit of The State of Louisiana, complainant, *versus* State of Mississippi, respondent, No. 11, original, of the docket of the Supreme Court of the United States, *do hereby certify*, that the record in this cause, as made up of evidence offered by the State of Louisiana, consists, and will consist, of the following, to-wit:

About fourteen hundred and fifty (1450) type-written pages, legal cap size, of testimony;

Seventy-seven (77) maps of various sorts and sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth;

I do further certify that no copy was placed in the record of maps Nos. 21 and 23, the originals obtained from the Congressional Library at Washington, D. C., being exhibited before me and returned to said library to be subsequently produced in original on the trial of this cause, it being testified before me that it was impossible to copy said maps by photographic process, by reason of their age and condition, and that map No. 56, although the original was filed with me, could not be copied for the same reason.

FRANK H. MORTIMER,
Commissioner.

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, State of Louisiana, duly commissioned and qualified, *personally came and appeared*: Mr. Frank H. Mortimer, who, being by me first duly sworn, deposes and says, that the facts stated in the foregoing certificate are true and correct to the best of his knowledge, information and belief.

FRANK H. MORTIMER.

Sworn to and subscribed before me, this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans.

ALVIN EDWARD HEBERT, Notary.

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EXHIBIT P-7.

STATE OF LOUISIANA, {
Parish of Orleans. }

Before me, Alvin Edward Hebert, a notary public, for the parish of Orleans, this State, duly commissioned and qualified, *personally came and appeared*: Mr. Reginald H. Carter, official stenographer for the State of Louisiana, in the suit of The State of Louisiana vs. State of Mississippi, No. 11, original of the docket of the Supreme Court of the United States, who being by me first duly sworn, deposes and says, that the testimony on the part of the State of Louisiana in said cause will make, when completely written out, about fourteen hundred and fifty (1450) type written legal cap pages of about three hundred words (300) each.

R. H. CARTER.

Sworn to and subscribed before me, this 8th day of October 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans.

ALVIN EDWARD HEBERT,
Notary Public.

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EXHIBIT P-8.

STATE OF LOUISIANA, }
 Parish of Orleans, City of New Orleans. }

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, this State, duly commissioned and qualified, personally came and appeared, Walter Guion, attorney general of the State of Louisiana, who being by me first duly sworn, deposes and says, that, on Friday, October 7th, 1904, he personally, by direct telephonic communication, notified Hon. William Williams, attorney general of the State of Mississippi, at Jackson, Mississippi, that the State of Louisiana, would, through counsel, appear in the Supreme Court of the United States, at Washington, D. C., on Monday, October 10th, 1904, and then move the said court for an order, permitting the State of Louisiana in preparing for submission to said court, the record in the suit of *The State of Louisiana vs. The State of Mississippi*, No. 11, original, of the docket of said court, to tender her map evidence in a single atlas form, containing all maps offered by the State of Louisiana, except those on file in the Library of Congress, Washington, D. C., and which could not be copied by photographic process by reason of their age, said court being moved to accept and receive said single atlas of maps as a full compliance with the requirements of its rules in such cases and the enormous expense of reproducing further copies of said maps being thereby avoided; and,

220 Affiant further deposes and says that the State of Mississippi had, from time to time, been furnished with copies of the maps, documents, and other evidence, offered as evidence, in said cause, as said maps were, from time to time, offered in evidence in said cause, save and except those maps, copies of which were formally waived by the State of Mississippi, as shown by the record, and those certain maps Nos. 21, 23, and 56, which, by reason of their age and discoloration could not be copied by photographic process.

WALTER GUION.

Sworn to and subscribed before me this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
 { Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
 Notary Public.

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EXHIBIT P-10.

STATE OF LOUISIANA, }
 Parish of Orleans, City of New Orleans. }

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, State of Louisiana, duly commissioned and qualified, *personally came and appeared*: Mr. John Dymond, Jr., who, being by me first duly sworn, deposes and says: That he is one of the associate

counsel representing the State of Louisiana in the suit of The State of Louisiana vs. State of Mississippi, No. 11, original, of the docket of the Supreme Court of the United States; that in his said capacity, as associate counsel, he has had charge of the procuring and preparing of the evidence offered by the State of Louisiana in said cause, and is familiar with the cost of reproducing copies of the maps offered in evidence in said cause, by the State of Louisiana, and that he estimates that it would cost, at the very least, the sum of seven thousand (\$7000.00) dollars to reproduce by photographic process twenty-five (25) copies of each of the seventy-seven (77) maps, offered by the State of Louisiana in said cause.

JOHN DYMOND, JR.

Sworn to and subscribed before me, this 8th day of October 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of }
Louisiana, Parish of Orleans.

ALVIN EDWARD HEBERT,
Notary Public.

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EXHIBIT P-9.

Office of the Clerk, Supreme Court of the United States.

WASHINGTON, D. C., October 22, 1904.

F. C. Zacharie, Esq., Washington, D. C.

DEAR SIR: In compliance with your verbal request of today, I beg to say I estimate that the total cost of preparing and printing the record in the case of Louisiana v. Mississippi, No. 11, original, of October term, 1904, at about \$2,000. This estimate is based on your statement that the record will contain about 1600 typewritten pages of 3 hundred words to a page.

Yours truly,

JAMES H. McKENNEY,
Clerk Supreme Court U. S.,
Per W. R. S.

223

(Endorsed :) Supreme Court, U. S. October term, 1904
Term No. 11, original. State of Louisiana, complainant, vs.
State of Mississippi. Motion in regard to reproduction of maps to
be filed in evidence. Filed Oct. 24, 1904.

224

And afterwards, to wit, on the 31st day of October A. D.
1904, the following order appears of record, viz :

225

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	{	No. 11, Original, October Term, 1904.
vs. STATE OF MISSISSIPPI.		

On consideration of the motion for leave to present the maps offered in evidence in this cause in atlas form instead of reproduc-

ing the same, it is now here ordered by the court that said motion be, and the same is hereby, granted.

October 31, 1904.

[Endorsed:] Supreme Court of the United States. October term, 1904. Term No. 11, original. Order. Filed Oct. 31, 1904.

226 And afterwards, towit, on the 13th day of March, A. D. 1905, a motion to open, publish and file testimony was filed in the words and figures following, viz :

227 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	} No. 11, Original.
vs. STATE OF MISSISSIPPI, Respondent.	

And now come The State of Louisiana, complainant, through John Dymond, Jr., of counsel and The State of Mississippi, respondent, through Hannis Taylor, of counsel, and upon suggesting to this honorable court that the commissioners appointed herein Mr. Frank H. Mortimer on behalf of the State of Louisiana, and Mr. William D. Bullard on behalf of the State of Mississippi, have made their returns and the said evidence is in the hands of the clerk of this honorable —

Do move that the said returns be opened and the said evidence be published and ordered filed.

JOHN DYMOND, Jr.,
Of Counsel for the State of Louisiana.
HANNIS TAYLOR,
Of Counsel for the State of Mississippi.

(Endorsed:) No. 11 original Supreme Court of the United States. State of Louisiana, complainant, vs. State of Mississippi, respondent, Motion to open, publish and file evidence.

(Endorsed:) Supreme Court U. S. October term, 1904 Term No. 11, original. State of Louisiana, complainant, vs. State of Mississippi. Motion to open, publish, and file testimony. Filed March 13, 1905.

228 And on the same day, towit, on the 13th day of March, A. D. 1905, the following entry appears of record, viz :

229 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,	} No. 11, Orig'l, October Term, 1904.
vs. STATE OF MISSISSIPPI.	

On motion of Mr. John Dymond, Jr., of counsel for the complainant, it is ordered by the court that the evidence in this cause be opened, published and filed.

March 13, 1905.

230 And on the same day, to wit, the 13th day of March, A. D. 1905, the evidence for the complainant was filed in the words and figures following, viz :

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Volume I.

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Frank Hastings Mortimer, Commissioner.

In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA	}	Original Bill, Number 11.
vs. STATE OF MISSISSIPPI.		

In accordance with the agreement executed between the attorney general of Mississippi and the attorney general of Louisiana, stipulating how the testimony in the above numbered and entitled cause should be taken, counsel met this 17th day of March, 1904, in the city of New Orleans, Louisiana, before Frank H. Mortimer Esq., commissioner, duly appointed and designated to take the testimony on the part of the State of Louisiana, by order of the Supreme Court of the United States rendered in said cause on March 1st, A. D. 1904,—the attorney general of the State of Mississippi having waived in this instance, the ten days' delay as shown by the following communication, to-wit:

"Department of Justice, Attorney General's Office; William Williams, Attorney General; J. N. Flowers, Ass't.

JACKSON, MISS., March 14th, 1904.

234 Hon. Walter Guion, attorney general of Louisiana, New Orleans, La.

DEAR SIR: We consent to waive the delay agreed on by us in our agreed stipulation as to the ten days' delay for notifying each other, and Mississippi will have a representative present at 11 o'clock a.m. on the 17th inst. at the office of Frank Mortimer, clerk of the United States district court, in the customhouse building in New Orleans to take the testimony of your witness whom you state will leave New Orleans on the 18th inst. unexpectedly, and whom you expect to be absent for several months.

Yours very truly,

WM. WILLIAMS,
Attorney General."

In pursuance of the aforesaid agreement executed between the attorney general of Mississippi and the attorney general of Louisiana, the commissioner for Louisiana stated that he had employed Mr. R. H. Carter as the official stenographer to report the testimony on behalf of the State of Louisiana, and he was thereupon sworn as such.

AGREEMENT.—It is agreed between counsel representing the State of Louisiana and the State of Mississippi that it shall be unnecessary for the witnesses to sign their depositions taken by the stenographer on behalf of either side. This agreement is made in the presence of the commissioner and counsel for both parties.

Appearances.

On behalf of the State of Louisiana, Hon. Walter Guion, 235 att'y gen. F. C. Zacharie, Esq., and John Dymond, Jr. Esq., associate counsel.

On behalf of the State of Mississippi, Monroe McClurg and Mess. Dodds and Griffith of counsel for the State of Mississippi.

Major B. M. HARROD, sworn by the commissioner testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Major, where do you reside?

A. New Orleans.

Q. How long have you been residing in New Orleans?

A. It has been my home all my life.

Q. How old a man are you?

A. Sixty-seven.

Q. Were you born in the city of New Orleans?

A. Yes sir.

Q. What is your profession?

A. Civil engineer.

Q. How long have you been practicing that profession?

A. Since 1857.

Q. Are you the Major B. M. Harrod recently appointed to membership on the Panama Canal Commission by President Theodore Roosevelt?

A. Yes sir.

Q. When do you leave the city for the purpose of attending the first session of the Panama Canal Commission?

A. On Saturday next.

Q. This coming Saturday?

A. Yes sir.

Q. What official positions have you occupied in your capacity as an engineer?

A. Up to the date of my appointment on the Isthmian Canal Commission I was a member of the Mississippi River Commission since 1879.

236 Q. What other official positions have you occupied?

A. I have been chief State engineer of Louisiana; city engineer of New Orleans.

A. Are you familiar, Major Harrod, with that section of the parish of Saint Bernard which is in dispute as to ownership between the States of Louisiana and Mississippi?

A. I think I am, yes sir; I have been through parts of it and I am with the maps.

Q. Did you ever live below the city of New Orleans?

A. Well I spent a great part of my early youth down at English Turn about 18 miles below the city.

Q. Is that on the Mississippi river?

A. It is on the left bank of the Mississippi river.

Q. How long ago was that, Major?

A. Well, up to the war I was there frequently.

Q. What war do you refer to?

A. The '61 war.

Q. Did you ever have occasion, at that time, to go out into the marsh to the eastward?

A. Yes sir; I went through the prairies back of there, on several occasions.

Q. On fishing expeditions?

A. Fishing and hunting.

Q. How old were you at that time?

A. I was born in '37 and this extended up to '61.

Q. Did you ever get, on any of your excursions—

A. No, I beg your pardon, up to about '53 or '54; after that I was getting an education at the North.

Q. Then these trips of yours were made before 1854?

A. Yes sir.

Q. Did you ever, on these excursions, get into the neighborhood of Point Chico on the eastern coast?

237 A. I was down there once, yes, sir.

Q. Eastern coast of the parish of Saint Bernard?

A. Yes sir.

Q. Why is Point Chico called Point Chico?

A. I always supposed from chico meaning stump, from the existence of stumps along the shore there.

Q. Is chico French, is that the French for—

A. I understand it to be the French for stump, Point Chico, stumpy point.

Q. Did you ever see any stumps at Point Chico?

A. Yes sir; there were cypress stumps out in the water there.

Q. Did you examine those stumps?

A. I saw them from the shore.

Q. How far off from the shore were they?

A. I should say from a quarter to a half a mile out into probably three or four feet of water, five may be.

Q. You saw those stumps there yourself?

A. Yes sir.

Q. Are you sure they were cypress stumps?

A. I could say, with that decided expression, yes, from the shape of them.

Q. Are you familiar with the peculiarities of cypress stumps in their conformation?

A. Yes sir.

Q. Like cypress knees and things of that sort?

A. Yes sir; from the spread of the lower part of the trunk.

Q. Did you notice those peculiarities in the case of these stumps?

A. Yes sir, they were cypress stumps.

Q. Could you fix about the time that was?

A. No, I could not, more definitely than I have already done.

Q. But it was prior to 1854?

A. Yes sir.

238 Q. Have you seen cypress trees growing in other portions of the State of Louisiana?

A. Oh, yes.

Q. In what sort of water do cypress trees grow?

A. If they grow at all, it is fresh or perhaps in brackish water. I never saw them growing in really salt water.

Q. What was the character of water where those trees were located?

A. This was the open coast; it was salt water.

Q. Were those trees growing at the time you saw them?

A. No sir.

Q. What caused the death of those trees?

A. My belief has always been by the subsidence of the land; they grew when the land had sufficient elevation and then the subsidence of the land killed them.

Q. Could those trees have grown in salt water as it existed at the time that you saw the situation?

A. I should think not. I never saw cypress trees grow in similar situations.

Q. Have you ever had, in your experience as an engineer, and in your connection with the Mississippi River Commission, any occasion to examine into the question of the subsidence of this section of the country?

A. We have had lines of levels run from Baton Rouge down and duplicated on two or three occasions; but I do not think the interval between has been long enough to positively establish it; the general indications are that there is a subsidence. The clearest case is down at the mouth of the river where, on the petition of the jetty contractor, the Eads Company, the plain of reference was examined into and changed; that added to the conclusion that there was a subsidence down there and it would be only fair to him owing to that, to change the plain of reference to which his channel depths were referred.

239 Q. This section of the country that you are now referring to is south of the area in dispute between Louisiana and Mississippi?

A. Yes sir. It is down at South pass, the banks above.

Q. Have you ever known, in any other locality, an instance where there was evidence of the subsidence of the country?

A. I think I have observed evidences of subsidence; I think it is generally admitted by geologists and all who had any occasion to look into it, that there was an undoubted subsidence of the coast east of the Mississippi river and probably west; but the observations have been more frequently east of the Mississippi river. I have seen evidence that I consider proof of subsidence.

Q. Would you give us another instance, if you know, of it, of where you saw proof of subsidence?

A. Well, when the New Orleans and North Eastern railroad replaced their trestle along the south side of Lake Pontchartrain with an embankment, they dug a canal there; that surface was marshy, very much such a marsh as exists around the parish of Saint Bernard; but down at the bottom of the trench they dug, probably six or eight feet, there was a tier of cypress stumps, a great number of cypress stumps; that depth was five or six feet below tide level, and I do not suppose those trees grew there; I suppose they grew on the surface of the ground when it was above tide level and that ground had since sunk and been filled up by river deposit above.

Q. Were those stumps upright, in a growing position?

A. Yes sir. A similar thing is found throughout the city; not throughout the city but a great many places in the city where we had been digging in the past few years for drainage and sewerage purposes, that is, tiers of stumps below sea level.

Q. Could those stumps have been carried there by overflow or were they grown there?

A. There were some fallen trees, but most of them were roots in place where they had grown.

Q. What was on top of the stumps in this North Eastern Railroad canal?

A. The usual marshy formation which I think is most exclusively river mud and decayed vegetable matter.

Q. Was this section you are speaking about, in connection with the North Eastern Railroad canal, north of the disputed area between Louisiana and Mississippi?

A. It was west of it.

Q. Well, was it on—

A. I think it was pretty nearly on the same parallel; a reference to the map would settle that.

Q. In your connection with the Mississippi river as a member of the Mississippi River commissions, have you had occasion to study the Mississippi river, the hydrography of the Mississippi river?

A. Yes sir, that is my duty.

Q. And this lower country?

A. Yes sir.

Q. How was this lower country formed, say from New Orleans south or a line drawn east and west through New Orleans south?

A. I think it was formed by water escaping in overflows from the

Mississippi river and the deposit of the silt that that water contained.

Q. When, so far as you know, if you have any knowledge, did the Mississippi river cease to flow over its banks from New Orleans down, say to English Turn?

A. Well, the first levee completed, I think, was in 1728, and from that time it was pretty steadily extended in both directions up and down the river. Without fixing any exact date, I suppose the left bank of the river that far down and a great deal farther up, was leveed about 1750; the levees had extended down that far about 1750 I think; of course that is not an exact date.

241 Q. Since that date, has there been any alluvium deposited in this disputed area?

A. Very little except through crevasses. I think I might mention in that extension of levees down the river was involved the closure of Bayou Terre Aux Bœuf which was a channel that formed a great part of this Saint Bernard area. That, in the neighborhood, I suppose of 1700 was an open channel discharging in high water quite freely, and these levees that were built, closed that.

Q. Well, since the closure of Bayou Terre Aux Bœuf has there been any alluvium deposited out in the eastern section of the Saint Bernard archipelago?

A. Only what got through crevasses.

Q. Was that appreciable?

A. Locally; I should not suppose it was general; right in the vicinity of the crevasse there would be a deposit; I don't think those crevasses were frequent enough or continued long enough to raise the entire surface of that tract.

Q. Would any crevasse south of English Turn affect that section of the country?

A. South of English Turn, I think they would run right down into the sea below; I don't think they would extend back into the Saint Bernard peninsula.

Q. Did the Bonnet Carre crevasse have any appreciable affect on Lake Pontchartrain?

A. Yes sir. I had occasion to make a survey of that once and discovered very, very great effects from the overflow through Bonnet Carre opening, not any particular crevasse, but the result I found was probably from the overflow before that opening was leveed, and then the overflow that came from several crevasses that occurred there after it was leveed; but the deposit in Lake Pontchartrain was very marked.

242 Q. Would the silt or sediment or alluvium carried by the water from Bonnet Carre crevasse reach as far south east as the Saint Bernard archipelago or peninsula?

A. Most of it would be deposited in the lake; what was transported would be carried out through the Rigolets and Chef Menteur and other bayous that were open at that time connecting Lake Pontchartrain with Lake Borgne.

Lake level

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Louisiana } a.
Mississippi }

P-1

J. H. Mortimer
Commissioner.

A B

Q. Would that have produced any appreciable effect in the formation of the Saint Bernard peninsula?

A. I should not think so, because the Saint Bernard peninsula, the level of it is about mean high tide and the amount of overflow from the crevasse running into the lake, Lake Pontchartrain, would have been, well, less than a foot, and whatever deposit was made would have—running into the grass covering a marsh of that character would have been right on the edges. I don't think it would have been general.

Q. If, then, there has been no deposit of alluvium in that section, would it be correct to suppose that there had been no elevation of the surface?

A. I don't think there has been from that cause. I think all the coarser material was deposited in Lake Pontchartrain. If I could make a little sketch I could show you very clearly what I found there. (Witness is handed paper and pencil by counsel) This is the land surface extending from "A" to "B"; then this is the old bed of the lake from "B" to "C" composed of clay and shells; just off shore we went down to a depth of about nine feet and off shore was a bar composed exclusively of river deposit over which there was only about three feet of water; and this shaded area extended along the shore of the lake for many miles and was evidently the deposit that the waters of the overflow from Bonnet Carre
243 made when its velocity was stopped in the lake; all the coarse stuff was dumped right there.

OFFER.—Counsel for the State of Louisiana, in connection with the testimony of witness, offer, produce and file in evidence, the diagram drawn by him in lead pencil marked Exhibit P-1.

(Here follows diagram marked p. 243a.)

Q. The area or locality that you are speaking of, in connection with the diagram, and as I understand it, is Lake Pontchartrain?

A. Along the south shore of Lake Pontchartrain.

Q. How many miles distant, in a rough way, would that be from the Saint Bernard archipelago east of what is called Petite pass, about?

A. I suppose it was about 20 to 25 miles from the west end of the Rigolets; the Rigolets is about nine miles long, I believe, and the distance of this Petite pass I don't know.

Q. That is, the locality that you investigated was 25 miles distant from the west end of the Rigolets?

A. Yes sir.

Q. And you would have to add the distance from the west end of the Rigolets to Petite pass to get the distance?

A. Yes sir.

Q. The tendency of crevasse water when it meets an open body of water, especially salt water, is what in regard to the load of sediment carried by the fresh water?

A. When its velocity is arrested, or reduced, it deposits a sediment.

Q. Would it be likely to have carried it 25 miles further than the point which you examined?

A. No; all the coarser sediment, I think would be and was deposited in Lake Pontchartrain.

Q. The distance of at least 25 miles plus the distance from the west end of the Rigolets to Petite pass—

244 A. Well, no; after it struck the Rigolets there is considerable velocity and any sediment that was not deposited in Lake Pontchartrain, upon reaching the Rigolets would probably be carried through it by the velocity you find there; but that would be only the finer stuff, the heavier stuff would be already settled in the still water of Lake Pontchartrain.

Q. Any carried through the Rigolets would be deposited—

A. In the next still water it met, where the lake widened out.

Q. What body of water would that be?

A. Lake Borgne.

Q. What effect has the heavy salt water in regard to the precipitation of the load carried by the out-going fresh water?

A. It has a chemical effect in precipitating it. The chemical effect depends not on the velocity altogether but on the influence of the salt water.

Q. Does the contact of this crevasse fresh water with salt water, does that condition retard or accelerate precipitation when it comes in contact with salt water?

A. It hastens precipitation.

Q. Have you had any occasion in recent years to examine the coast line from Petite pass to Isle au Pied?

A. No sir.

Q. Major Harrod, are you aware of what the engineers of the

country have recognized as being the boundary between the States of Louisiana and Mississippi to the south of the State of Mississippi and to the north of the south eastern portion of the State of Louisiana, and more particularly the parish of Saint Bernard?

EXCEPTION.—Mr. McClurg on behalf of the State of Mississippi reserves an exception to this interrogatory as being incompetent.

A. No; I do not think I have been connected with any work in which they have had to hold an opinion of that sort.

By Mr. ZACHARIE:

245 Q. You have spoken of one visit to this territory at the point called Point Chicot?

A. Yes sir.

Q. Have you made other trips to this peninsula of Saint Bernard?

A. Never to Point Chicot. I have been down by Lake Leary and that neighborhood repeatedly.

Q. Did you, on any of these trips, ever penetrate to the interior of this peninsula?

A. I followed the bayous; I went down the canals to Lake Leary and went down to the bayou beyond that—I was trying to call the name—Saint Malo.

Q. Were you hunting or fishing?

A. I have been down there on both errands, hunting and fishing.

Q. Did you have occasion to traverse the land in hunting?

A. Not beyond Lake Leary, except for camping purposes; but this side of Lake Leary I hunted through the country between Lake Leary and the Mississippi river.

Q. So far as you have been able to observe, what was the character of the soil?

A. The character of the soil is river deposit and decayed vegetable matter.

Q. Was it dry land or marshy land?

A. Marsh land. Its level is mean high tide generally, that is the physical law.

Q. Do you know, Major Harrod, either of your own knowledge or by tradition and report, what effect autumnal gales have had upon the configuration of the Gulf coast to the eastward of this peninsula and generally along that Gulf coast, either of your own knowledge or by tradition.

A. No sir; except the outlying sand islands. I have heard and I think I have observed the position of some of them have been changed by storms; Ship island was said to have been cut in half a few years ago; Chandeleur islands have been moved some;

246 Horn island has been moved some. But the coast line composed of this river deposit and grass—covered with that grass, I do not know of any serious washing away; there, of course, must be a little subsidence.

Q. Have you ever visited Round island in the past years or do you know of it?

A. Let us see, that is off Pascagoula.

Q. No; lying between Saint Bernard and the Mississippi River coast?

A. No sir; I never landed there—near Grassy island?

Q. Yes?

A. I have passed there but never landed there.

Q. Major Howard, from the date of your appointment as chief of the State engineers and your subsequent occupation of the positions on the Mississippi River Commission, have you paid a great deal of attention or study to the hydrography of this lower country?

A. Generally, of the river, and especially to the lower part to the extent of having had lines of level re-run, from Baton Rouge down. I think there have been three lines run.

Q. As far back as your knowledge extends from the researches which you have made, has there been any crevasse which would materially affect by deposit or alluvium the territory in dispute here, so far as your knowledge goes either personally or by research?

A. No sir; there has been no serious crevasse on the left bank of the river below Baton Rouge since I have been connected with it, since 1887, except Bonnet Carre.

Q. Well, in so far as your researches have gone in reports of prior crevasses, going back into the eighteenth century, have there been from your researches any crevasses which would tend to deposit alluvium?

A. I do not think, as far back as any records, there have been any crevasses of magnitude there at all except Bonnet Carre which has broken repeatedly. It was open when I first went on 247 the river commission and it had been broken previously several times. The others had already been closed, the small ones, as soon as the water fell, but Bonnet Carre had been open two or three years on account of its magnitude and difficulty of closing it.

Q. Where is Bonnet Carre?

A. About 35 miles above here.

Q. On which bank?

A. On the left bank.

Q. That is the eastern bank of the Mississippi river?

A. Yes sir.

Q. And you have already testified that, in your opinion, that crevasse could not and did not affect any appreciable change in the condition of this peninsula or archipelago?

A. I think an immense portion of the sediment was deposited in Lake Pontchartrain in its passage.

Q. And Lake Borgne?

A. And Lake Borgne; Lake Pontchartrain particularly.

By Mr. DYMOND:

Q. Do you know the River Iberville now called Bayou Manchac was closed by levees?

A. I do not know the year, no sir.

Q. If I understood you correctly, you stated a few moments ago that the section below New Orleans, as far down as English Turn, had been leveed since some time about 1750?

A. Yes sir; I did not give that as an exact date; I said I believed about 1750 the levees had been extended as far down as beyond Bayou Terre Boeuf and probably a little further up.

Q. How far up?

A. I couldn't say; the upward extension was more rapid.

By Mr. ZACHARIE:

Q. To what distance, about, above the city of New Orleans?

248 A. I could not say; I do not think those records are in existence except very generally.

By Mr. DYMOND:

Q. Did you say 1750 or 1850?

A. 1750.

Q. How far back, to your knowledge, do you know that the River Iberville was closed with levees?

A. My first connection with the river was in 1877; it was closed then.

Q. How far above New Orleans is Bayou Manchac, formerly the River Iberville?

A. Let me see; that is the open between Donaldsonville and Plaquemine?

Q. Yes?

A. It is about ninety miles.

Q. Well, was not the River Iberville closed with levees before 1877?

A. Oh, yes.

Q. According to tradition?

A. O, yes.

Q. Well, about how far back, according to tradition was that closed?

A. I could not tell you, a long time though.

Q. Would it have been closed in 1850?

A. I have no doubt it was closed in 1850. I think we know it was open in 1812 so it was closed between 1812 and 1850. General Jackson obstructed it, I believe in 1812 or 1814, with trees.

Q. Is that tradition?

A. So I have always heard.

Q. Was that in connection with the battle of New Orleans?

A. Yes sir, for the defense of New Orleans.

By Mr. McCLURG:

Q. What was it General Jackson closed?

A. Bayou Manchac, or River Iberville. But that was with trees.

By Mr. DYMOND:

Q. About what point was it that General Jackson is reputed to have closed the River Iberville?

A. I could not tell you.

249 Q. Now, where would the River Iberville, in carrying the water from the Mississippi river discharge its water?

A. Discharge it into the Amite and then down into Lake Maurepas and then in through Pass Manchac into Lake Pontchartrain and so on out to the Gulf.

Q. Where would the sediment be dropped by the water coming from the Mississippi river through the River Iberville?

A. Most of it, in Lake Maurepas I think.

Q. What was not dropped in Lake Maurepas would be dropped where?

A. Next into Lake Pontchartrain.

Q. What was not dropped in Lake Pontchartrain would be dropped where?

A. Next in Lake Borgne.

Q. Would there have been any alluvium deposited on the Saint Bernard archipelago or peninsula on the north shore to the eastward of Petite pass by the water coming from and through the River Iberville after it had passed through Lake Maurepas, Lake Pontchartrain, and Lake Borgne?

A. I should think not; there would be nothing left but the finer material and the level of that marsh is mean high tide and any overflow of it by this water would have been for a few inches only, probably not more than a foot at the outside, and any sediment that did not get on it would be arrested by the grass that would stop the flow of the river along the margin, along the shore; I do not think it would have any effect in the general elevation of that land.

Q. Well, since the partial and final completion, or, during the course of this completion of the levee system since 1812, or the construction of the levee system, do you know of any crevasse between Baton Rouge and New Orleans which would have affected this disputed territory?

A. I think not; I think that peninsula was built up by Bayou Terre Beuf.

250 Q. Did I understand you to say about when Bayou Terre Beuf was closed where it connected with the Mississippi river?

A. I said that I thought, from the vague histories that come down about that, that the levees had extended as far as Bayou Terre Beuf about 1750.

Q. Do you mean to say by that, that Bayou Terre Beuf was closed in 1750?

A. Yes sir; that would be closed in the natural extension of the levees down the coast.

Q. You are relying, as I understand it, on tradition and vague history?

A. It is very vague; all the facts are contained in Humphrey and Abbot's book *Physics and Hydraulics*, of what is known about the time of the extension of the levees.

Q. Did I understand you to say a moment ago that it was your opinion that this Terre Bœuf peninsula had been built up by the deposit coming through Bayou Terre Bœuf?

A. I think so.

Q. Well, when that bayou was finally closed at whatever time it was closed, what effect would that have had on the continuation of the building up of that country?

A. The progress of land building was checked, if not entirely arrested.

Q. Major Harrod, from your studies of the geology and hydrography and topography of this southern portion of the State of Louisiana, namely, the alluvial formation by the deposits from the Mississippi River water previously running over the banks on to the east and west country on both sides of the river prior to the construction of levees, what, in the opinion of scientists and geologists, is the transformation, if any, or change, if any, which has occurred in this section today as to raising or lowering?

EXCEPTION.—Counsel for the State of Mississippi reserve an exception to this interrogatory as being incompetent because the witness has not qualified himself.

251

Question withdrawn.

Q. Major Harrod, are you prepared from the studies which you have made, to say what is the general opinion of scientists as to the change in the matter of raising or lowering of the alluvial lands east and west of the Mississippi river in the southern portion of the State of Louisiana, since the completion of the levee system?

A. I think I am familiar with the consensus of geologists, yes sir.

Q. Now, Major Harrod, what is the general opinion?

A. It is, that the Gulf coast, the entire Gulf coast, east of the Mississippi river, is a region of subsidence.

Cross-examination.

By Mr. McCLURG:

Q. You have stated, Major Harrod, that you understand the contention between these two States as to the dividing boundary lines and the waters of the Gulf or Mississippi sound; and I understand that you have been examined as an expert on civil engineering, as a man of wide experience, because of your association with the Mississippi River Commission. The trend of your examination by counsel for Louisiana is to show that the territory lying to the

east of Louisiana is the result of deposits from over flow of the Mississippi river of long standing? Is that correct?

A. Yes sir.

Q. And your opinion is, that there is a recession of the waters that extends the land further to the east or is it the subsidence of the land that extends the water further to the west on the eastern coast of Louisiana?

A. I believe there is a general subsidence of the land here which extends the boundaries of the waters except where the subsidence is compensated by the additional deposit brought by the river.

252 Q. These stumps that you spoke of are east of Saint Bernard parish?

A. Yes sir, off a point called Point Chicot, one of the extreme eastern points of that peninsula.

Q. Stumps of trees, cypress trees?

A. I took them to be so.

Q. You observed them when?

A. I should think it was in the early '50's, between '50 and '55.

Q. What was their condition with reference to decay, at that time?

A. They were some distance out in the water; they seemed to be badly decayed; they had been killed and rotted off substantially near the water surface and I suppose the trunks had floated away.

Q. How long it had been since they were live trees of course you have no idea?

A. None whatever.

Q. You are not prepared to say they were not dead trees in 1812 or 1817?

A. No sir.

Q. Are you prepared to say, Major, that the water line on the eastern main land of this State had made any material changes in its course or in its mark, since 1812 or 1817?

A. No sir. I suppose that coast has been subsiding and there has been a compensatory building up by the piling up of sand by the sea. There is evidence that those islands have subsided, but yet their present height has been restored by fresh material from the sea; but there is no doubt but what they have subsided.

Q. You mean the marsh islands of which you spoke?

A. No sir; I am speaking of the islands off the main coast of Mississippi, Ship island, Horn island, in particular. Then such formations as Mobile bay, Pensacola bay, Bay Saint Louis, are accredited as evidence of subsidence. Around the river mouth

253 I think there is evidence that the coast has subsided.

Q. And those stumps indicate what, then, the filling in, the taking in of the soil, the stumps under the Northeastern Railroad canal you spoke of?

A. That there was a subsidence and after that the land was filled up to about its previous level.

Q. So that the rule works both ways, it subsides at places and then fills again?

A. Well, it subsides every where and it fills where the deposit from the river has continued access to it; or, it may fill from decayed vegetable matter.

Q. The change of those islands is due, I understand you to say, to the action of the water, storms, and the like of that?

A. Well, their outline has been interfered with by storms; one of them I have been told has been washed through, Ship island, about eight or nine years ago.

Q. The same influence that would affect those islands, would it in any degree affect the channels leading out of the Lake Borgne into the Gulf proper?

A. I think the bed there is generally clay and a harder material than the islands. I made a great many borings at one time in connection with that and found a hard clay bottom underlying everything.

Q. Where?

A. That was on the land between Chef Menteur and the Rigolets; I made 100 borings there at one time.

Q. The channel that leads out of the Rigolets?

A. The Rigolets is the channel connecting Lake Pontchartrain and Lake Borgne, and Chef Menteur is another channel of the same sort.

Q. Where does that channel reach the Gulf, leading out of the Rigolets?

A. They both discharge into Lake Borgne and then through Mississippi sound.

Q. Is there a channel out of Mississippi sound southward near the Louisiana shore of any depth?

A. There is a channel to the south of Cat island and there is a channel between most of the other islands; there is quite a channel between Ship island and Cat island; there is a small channel but a well defined one south of Cat island.

Q. I will ask you to please state, how far Bayou Terre Bœuf is south of the line claimed by Mississippi to be the boundary between these two States?

A. I do not think I am familiar with these claims. I have seen maps but I have not fixed them in my mind.

Q. Do you know where Nine Mile bayou is?

A. I know Nine Mile bayou is three or four miles beyond Proctorville, the mouth of it.

Q. Then how far is it to Bayou Terre Bœuf?

A. Well, I should think Terre Bœuf was three or four miles, the distance from Terre Bœuf, from the ridge above Proctorville is three or four miles more, but it is long since I have been there and I do not carry distances—

Q. Do you know where Indian mound or—

A. No sir; I simply know that it is in that marsh but I have never been there and I do not know where it is.

Q. These influences of overflows and deposits of silt and the like of that of which you have spoken, are most permanent in the Bayou Terre Bœuf neighborhood are they not?

A. Well, the Bayou Terre Bœuf was an outlet of the river and the banks of that are higher than the marsh beyond, that was formed by the overflow from the banks of the bayou, the heavier material, a large part of it, was deposited immediately on the banks of the bayou.

Q. And the levee was extended that high up about 1750 you think?

255 A. I think, from the descriptions, the levee was carried that far down, about 1750.

Q. I desire to put to you this general question and have you to answer it, of course in your own way, whether you think there has been any material change in the mainland coast of Louisiana from the mouth of Pearl river to a distance of 18 miles due south, since 1812 or 1817?

A. I could not connect it with time at all; but I think there is no doubt but what subsidence has been going on and is going on, on that coast down there; but the rate of it I could not positively say, but it has been going on for a long time and is going on now, there is no doubt of it.

Q. You make that statement, as I understand it, from general observation?

A. From reading geology and then from general observation; I have seen instances myself.

Q. But I mean with relation to this particular location. You have no definite knowledge of any material change within this limit?

A. Not within that limit of time, but within that limit of space I have.

Q. Not within that limit of space or within that limit of time?

A. Within that limit of space I have. I think the instance I cited about the Northeastern railroad is within that limit of space, south of Pearl river, that would include the evidence of subsidence of the marsh through which the Northeastern railroad runs.

Q. You mean to say you made that observation since you have—

A. I mean I saw the excavation of that canal when it was going on and saw the stumps dug out and I talked to the engineer about it.

Q. But you have no idea when those changes were made?

A. Not the rate of the subsidence, nor how long it took.

256 Q. The Mississippi shore on the sound is better defined than the Louisiana shore; I mean to say it is more permanent, more marked?

A. It is different material, yes, it is out of reach of the deposits of the Mississippi river

Q. Less change in that you think—

A. Changes—

Q. Along the Mississippi shore than along the Louisiana shore for that reason?

A. Changes of outline you mean?

Q. Yes?

A. Well, I should think, yes, generally speaking. It is pretty hard clay. Some of those sand islands have shifted in their outlines very considerably, but the main shore of Mississippi I should say is more permanent than Louisiana.

Q. You have not undertaken to testify as an expert geologist?

A. No sir.

Q. Nor with reference to being an expert except to anything in your profession as a civil engineer?

A. Except from a general interest in an allied science.

By Mr. GRIFFITH:

Q. Major, have you ever seen Nine Mile bayou?

A. No sir.

Q. You have never been on it at all?

A. I do not recall going along that shore beyond Proctorville.

Q. The counsel for Louisiana have spoken of the Saint Bernard archipelago. Is there an archipelago in that neighborhood, in the neighborhood of Saint Bernard parish?

A. Well, I have not heard the expression before. There is an area of land there which is pretty well cut up by bodies of water, lakes and bayous, which I have attributed to tidal movements and subsidence.

Q. Well, do you believe that since the years 1812 or 1817 the conformations of those islands have been material-
257 changed either by an action of tidal waters or subsidences or by any other agencies. And we mean by those islands in this question those nearest and adjoining Saint Bernard—the main land of Saint Bernard parish?

A. I could not give any answer about the time, since 1817 or 1818. I believe that peninsula was formed by the river deposits being placed out in a shallow sea that had tidal movements and instead of forming a solid peninsula it left these open areas through it for the tidal movement in and out of Lake Borgne and Lake Pontchartrain and that those lakes or spaces of water have been enlarged since their formation, by subsidence. That is my opinion about the formation of that peninsula; that water areas were left there when it was originally formed and have been subsequently enlarged by subsidence.

Q. How long do you think since this process has been going on; how many years?

A. For centuries I have no doubt.

Redirect examination.

By Mr. DYMOND:

Q. You spoke a moment ago on your cross examination, in reference to a channel south of Cat island. Is that channel between Cat island and Isle au Pied.

A. Yes sir, there is a channel there.

Q. Is that the one you referred to?

A. Yes sir.

Q. You spoke of another channel on your cross examination, coming out of the Rigolets. Is that correct?

A. Well, the Rigolets is a channel connecting Lake Pontchartrain and Lake Borgne, one of several.

Q. And Lake Pontchartrain discharges through the Rigolets into Lake Borgne?

A. Yes sir, the Rigolets is very deep.

258 Q. So far as you know, is there any channel through Mississippi sound connecting the Rigolets with the Cat Island channel you have just mentioned?

A. There is a channel, yes sir, a seven or eight foot channel, it is not as deep as the Rigolets but it is a channel. In leaving the Rigolets at both ends you have to follow a channel going east or west.

NOTE.—At this state of the proceedings the taking of testimony was adjourned.

New Orleans, La., March 17th, 1904.

FRANK H. MORTIMER,
Commissioner.

Pursuant to notice to counsel of the State of Mississippi, the hearing of evidence on behalf of the State of Louisiana was resumed at the same place, at 11 o'clock a. m. April 4th 1904.

Present: Frank H. Mortimer Esq. commissioner.

Present: Judge Walter Guion attorney general of Louisiana Mess. F. C. Zacharie and John Dymond Jr. associate counsel for the State of Louisiana and Albert Estopinal Jr. associate counsel for Louisiana. Hon. William Williams attorney general of the State of Mississippi Mess. Monroe McClurg and Hannis Taylor, associate counsel for the State of Mississippi.

AGREEMENT.—It is agreed between counsel in this case that the proceedings shall be commenced each morning at half past ten and continued until half past one, when a recess of half an hour shall be taken, the proceedings to re-commence at two o'clock and continue until four o'clock, unless otherwise changed by mutual agreement.

Major HENRY B. RICHARDSON, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Major Richardson, you are a resident of the city of New Orleans?

259 A. Yes sir.

Q. What is your profession?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. Fifty years, I think, I may say nearly, I have been connected with civil engineering.

Q. How old a man are you?

A. I am in my 67th year.

Q. What official positions have you held in the State of Louisiana?

A. I have been a member of the board of State engineers from 1877 until the first of the present month; chief State engineer during that time from 1880 until the first of the present month.

Q. You refer, do you not, to the State board of engineers of Louisiana?

A. Board of State of engineers of Louisiana, I mean.

Q. What is your present official position?

A. I am a member of the United States Mississippi River Commission.

Q. When were you appointed to membership on that commission?

A. I qualified for that commission on the 31st of March, I forget the exact date of appointment, it was some days previous.

Q. In what year?

A. The present year.

Q. Prior to that, I understand, you were the chief of the Louisiana board of State engineers?

A. I was chief State engineer.

Q. In your capacity as chief of that board were you given any charts of the United States Coast and Geodetic Survey by counsel for the State of Louisiana in this case?

A. I was.

Q. What did you do with those charts?

260 A. I instructed the chief draftsman of the board of State engineers, Mr. Duval, to place certain lines upon those charts in accordance with the directions of the gentlemen who gave them to me, what should I call you in that respect, I said gentlemen.

Q. Counsel for the State of Louisiana.

A. The counsel for the State of Louisiana.

Q. What are the initials of this Mr. Duval?

A. A. C. I believe, is it not. A. C. Duval.

Q. Will you please look at this—

By Mr. ZACHARIE:

Q. You have stated, to place upon those charts certain things that you were told by the counsel for the State of Louisiana; was it not a part of that request to have a map prepared from the Geodetic and Coast Survey charts and to delineate certain projections on that map?

A. It might be considered to involve that request. As a matter of fact the charts were prepared except the certain lines that have been placed upon them by Mr. Duval.

Q. You mean to say by the charts being prepared, you mean that the map was prepared from those charts do you?

A. Not quite. I mean that the charts published by the United States Coast and Geodetic Survey were all ready, printed and prepared, and were brought to my office at that time, and that in one case, this before me, three of those charts were attached to each other so as to form one single chart which is before you at this time. On that chart the certain lines that I have spoken of were placed by Mr. Duval. There were other maps there other charts of the Coast Survey on which practically the same lines were placed by Mr. Duval.

By Mr. DYMOND:

Q. Major Richardson, will you please look at this assembly of charts which is before you, and which, for identification we call map No. 6, and state whether it is made up of charts published by the United States Coast and Geodetic Survey?

A. This map, or chart, or assembly of charts, is made up of three charts made and published by the United States Coast and Geodetic Survey which are entitled coast chart No. 191, coast chart No. 190, and coast chart No. 192.

Q. Are these the charts which were given to you by counsel, for the purpose of assembling them into a foundation map?

A. They are.

Q. Referring, Major Richardson, to this map No. 6 and noting the projections in ink made thereon in lines, can you say by whom those projections were made and placed on this map?

A. Mr. A. C. Duval, chief draftsman of the board of State engineers of Louisiana, placed these lines to which you refer, upon this chart.

Q. Major Richardson, will you please look at this map which we will, for the purpose of identification, call map No. 7 and state what it is?

A. This chart is a publication of the United — Coast and Geodetic Survey and is entitled general chart of the coast No. 19, Gulf coast, approaches to the Mississippi river, Mobile bay to Atchafalaya bay. That is the title.

Q. Was this one of the charts given you by counsel of the State of Louisiana?

A. Yes sir.

Q. Was this chart turned over by you to Mr. A. C. Duval, chief draftsman of the board of State engineers?

A. It was.

Q. You will notice certain projections or lines that have been placed on that map No. 7. Will you please state by whom those were placed, under whose instructions?

A. They were placed upon this map by Mr. Duval under my direction or by my instruction perhaps it is better to say.

262 Cross-examination.

By Mr. McCLURG:

Q. These ink markings on the maps and charts which you have just identified, were made, you say, by a draftsman in your office?

A. Yes sir.

Q. They were not made by you?

A. Not by me.

Q. And that these ink lines in red and black were indicated to him by you and to you by the counsel for Louisiana in this case?

A. Yes sir.

Q. You do not undertake to show, of your personal knowledge, that those lines are accurate?

A. No, I think not. I believe they are; I have looked at them and revised them.

ANDRE C. DUVAL, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. What is your employment?

A. Draftsman.

Q. Where?

A. For the board of State engineers of Louisiana.

Q. How long have you been connected with that body?

A. Since 1889; not in that capacity.

Q. How long have you been draftsman of the board of State engineers of Louisiana?

A. 1895.

263 Q. You mean since 1895.

A. Yes sir.

Q. Did you receive any charts from Major Richardson chief of the board of State engineers?

A. Yes sir.

Q. Will you please look at this assembly of charts which has been

designated by map No. 6 and state whether they are the charts that you received from Major Richardson?

A. They are.

Q. Will you please look at these ink lines on the chart and state by whom they were made?

A. By me.

Q. Were they made according to a scale?

A. Yes sir, according to the scale—

Q. Scale on the map?

A. Yes sir.

Q. Under whose instructions were they made?

A. Under instructions of Major Richardson.

Q. Are they accurately made in accordance with the scale upon which the map itself is made?

A. To the best of my belief.

Q. What do they designate?

A. Well, now, this line designates—

Q. The one most to the eastward?

A. I would call it to the northwest. Well, it represents nine statute miles or nine nautical miles from Isle a Pitre.

Q. You mean the two outer lines?

A. The two outer lines represent nine nautical miles or nine statute miles from Isle a Pitre.

Q. Which end of Isle a Pitre?

A. From the center.

Q. Is that the northeast end of Isle a Pitre?

261 A. The north end of Isle a Pitre.

Q. What do the next two lines more in the direction of southwest represent?

A. Nine nautical miles or nine statute miles from Grand pass.

Q. Where is Grand pass located with reference to Isle a Pitre?

A. To the southwest.

Q. Is it immediately adjoining the southwestern end of Isle a Pitre?

A. Well, it is separated by a pass by the name of Grand pass.

By Judge GUION:

Q. I notice that you have just made in the presence of all the counsel in this case, both of Louisiana and Mississippi, made certain marks, or, rather, you have done certain lettering on this map or chart No. 6. State what the lettering is that you have done and what you intend to indicate by such lettering?

A. The lettering is intended to identify—

Q. What is the lettering, first; that was my first question, what is the lettering you have made?

A. Designating points of lines.

Q. What is that, there?

A. A.

Q. Just indicate it to the stenographer the lettering.

A. The line lettered A-A.

Q. Is what?

A. Is the nine nautical miles from Isle a Pitre. A'-A' is nine statute miles from Isle a Pitre.

Q. What part of Isle a Pitre?

A. The north end. B-B represents nine nautical miles from Grand pass. B'-B' represents nine statute miles from Grand pass. I have made some other marks up here, C-C and that represents the deep water sailing line from Pearl river to the gulf of Mexico.

By Mr. DYMOND:

Q. Are all of those lines accurately scaled in accordance with the proportions of the map?

265 A. They are scaled according to the proportions of the map and from the scale on the map,—

By Mr. ZACHARIE:

Q. That is, the scale of the United States Coast and Geodetic Survey?

A. —so that the shrinkage or anything of the paper would not affect—make errors of scaling by using another scale.

By Mr. DYMOND:

Q. Were those checked by you to ascertain if they were correct?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. These measurements that you have made on the maps identified by you, Mr. Duval, were taken from the north end of Isle a Pitre and from Grand pass, as I understand it?

A. Yes sir.

Q. You made these measurements at the direction of Major Richardson?

A. Yes sir.

Q. You state that from those starting points, that those lines indicated, are correct measurements?

A. Yes sir.

Q. Did you make the mark across that map that indicates the deep water channel out of the mouth of Pearl river?

A. Effollowed the lines indicated on the chart; they were printed on the chart before.

Q. By whom?

A. They are part of the survey published by the United States Government.

Q. That deep water channel mark that you followed out was on that map originally?

A. Yes sir. It has only been engrossed to show it out.

266 Q. What is the date of those charts, please?

A. Published at Washington D. C. September 18th, 1899, this one is No. 192. And this one here, published at Washington, D. C. No. 191, in 1900. And this one No. 190, in 1900.

Q. There are no indications made by you upon any of those charts which you have identified undertaking to show where the statute or nautical miles are measured from the east shore of Louisiana is there?

A. I do not understand the question very well.

Q. You have not made any indications upon that map which will show a point six leagues from the main land or shore or coast of Louisiana, have you?

A. That is a pretty hard question to answer. I have not put any points here from which I made my measurements.

Q. I want to know whether you have undertaken to make any other measurements or lines from the Louisiana shore except those you have indicated there?

A. On other maps? On this map you are talking about?

Q. Yes.

A. I have not.

Q. Do you understand why it is those measurements were taken from the north end of Isle a Pitre and Grand pass?

A. Why they were taken from those points?

Q. Yes?

A. I followed only instructions.

Redirect examination.

By Mr. DYMOND:

Q. You spoke about the date at which these charts were issued by the Government. Will you please examine them and state whether there is anything on them to indicate to what date they have been approved by the Government. In doing so please refer to each chart or map.

267 A. Chart 192 I see has been—aid to navigation—corrected from information received to August 8th 1903. Chart No. 191, aid to navigation corrected for information received to Nov. 17, 1903. And this map was corrected also but that has been cut and pasted on the other.

Q. Are you able to state to what date chart No. 190 has been corrected by the Government?

A. No sir.

Q. Why not?

A. Because in putting these maps together I had to cut the border.

Q. And was the data in regard to the correction on that border?

A. I could not—generally they have the—all those maps have that. Now, I don't remember, I didn't take any particular look at it. Generally the map has information to what date it is revised.

Q. Was the lower border of chart No. 190 cut off in assembling it?

A. Yes sir, both of the borders.

Recross-examination.

By Mr. McCLURG:

Q. These maps of which we have just been speaking, are the three maps that you have put together at the request of Major Richardson, are they?

A. Yes sir.

Q. Is it not true that in joining together chart 191, 190 and 192, that there is an imperfection just west of Lake Eugenie?

A. Your question was is it correct. I can't say it is incorrect, it may be deficient, but there is no information cut off.

Q. Don't it indicate that the map is not full at that point?

A. Maps 190 and 192 are full; but 191 is incomplete.

By Mr. DYMOND:

Q. Referring to the question just propounded by counsel for the State of Mississippi, did you omit anything in putting these three maps together?

268 A. No sir, nothing. Just the border, of course I had to take the border out.

Q. Well, what was the imperfection in the chart referred to by counsel for the State of Mississippi?

A. It is a blank shown on the chart.

Q. On what chart?

A. On chart No. 191.

Q. In what portion?

A. In the southwestern portion of the chart.

Q. In what sense?

A. In the sense that the—well it is really hard to answer, there is a blank with a legend in it instead of the topography or any topography around there.

Q. Why was it made blank?

A. Why was it made blank?

Q. Was it for the purpose of carrying the legend?

A. Yes sir, I suppose for the purpose of carrying the legend and that chart was complete as far as its name was concerned.

Q. By whom was that done?

A. By the Government.

Q. What Government?

A. United States Government.

By Judge GUION:

Q. Then you repeat that when you put these three charts, 190, 191 and 192 together, you put them together accurately just as they were completed by the Coast and Geodetic Survey?

A. Yes sir.

By Mr. McCLURG :

Q. You have stated, also, that in putting them together you trimmed the borders of some of them and may have trimmed off some of the aids. Now, may it not be true that you trimmed off some of the topography of that country there?

269 A. No sir, it could not be, because in cutting the edge, I have cut at the edge of the border and no topography passes the border.

By Mr. TAYLOR :

Q. Is it not a fact that that particular chart at that particular point, made by the Government, is defective; it does not cover the particular territory under investigation?

A. As far as defective I don't know.

Q. But deficient?

A. It is deficient.

Q. Deficient. It does not cover that part of the subject matter?

A. It is deficient.

OFFER.—Counsel for the State of Louisiana now offer, produce in evidence, the said map marked Map No. 6.

By Mr. McCLURG: Counsel for the State of Mississippi reserve an exception to the introduction of these maps because they are insufficient, uncertain, incomplete and incompetent.

ESTEVE E. NUNEZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND :

Q. What is your present position?

A. Sheriff for the parish of Saint Bernard.

Q. How long have you occupied that position?

A. 24 years. Since 1880 I was elected.

Q. When were you first elected?

A. In 1880.

270 Q. Is that the parish of Saint Bernard, State of Louisiana?

A. Yes sir.

Q. With what duties are you charged as sheriff of the parish of Saint Bernard?

A. I am charged with the duties as sheriff, as tax collector for the parish of Saint Bernard.

Q. Are you charged with the duty of keeping the peace and seeing to an observance of the laws of Louisiana in the parish of Saint Bernard?

A. Yes sir.

Q. As the sheriff of the parish of Saint Bernard, are you supposed to enforce the oyster laws enacted by the State of Louisiana?

A. Yes sir.

Q. Was it your duty?

A. Yes sir.

Q. To enforce those laws?

AGREEMENT.—Counsel for both the State of Louisiana and the State of Mississippi now agree in the presence of the commissioner, that in trial of this case and the argument before the supreme court in reference to the laws of the two States, reference shall be made to the official publications by the respective State of their respective laws without the necessity of filing copies of said laws in the record or offering the same in evidence. But, for the convenience of counsel typewritten or printed copies of the laws of the respective States to which reference shall be made shall be furnished by the respective counsel to the opposite counsel and used in evidence by either side if desired.

Mr. Dymond: In accordance with and in connection with the above agreement, counsel for the State of Louisiana now present to counsel for the State of Mississippi, typewritten or printed copies of the following acts of the Louisiana legislature, to-wit, act 18 of 1870; act 91 of 1871; act 106 of 1886; act 98 of 1888; act 110 of 1892; act 35 of 1894; act 121 of 1896; act 159 of 1900; and act 153 of 1902.

Q. Mr. Nunez, you have just heard the reading of the list of laws of Louisiana on the subject of her oyster industry as enumerated by counsel. Did your duties as sheriff charge you with the necessity of enforcing the provisions of these oyster laws, in the parish of Saint Bernard?

A. Yes sir, it did at the time.

Q. Did you ever have any complaint brought to you in regard to non-residents of this State fishing oysters in the parish of Saint Bernard?

A. Many and many complaints.

Q. About when were these complaints?

A. Most of the complaints came, I think, in 1897, '96 and '97 and '98, even after that, in 1900 but they started from '96 or '97, I don't remember exactly.

Q. Who were these people about whom complaint was made?

A. How is that, you say?

Q. Who were these non-residents?

A. Residents from Mississippi.

Q. In what part of Saint Bernard parish were they fishing oysters?

A. I don't know much about the country. I know it is in the parish of Saint Bernard, but way out.

Q. Way out in which direction?

A. I couldn't tell you exactly, but I heard mention Nine Mile bayou, Lake Karako, somewhere around there.

By Mr. McCLURG :

Q. It is all hearsay as far as you are concerned ?

A. It was reported to me.

By Mr. DYMOND :

Q. Was any action taken on the subject by the police jury of the parish of Saint Bernard ?

A. Yes sir.

Q. Can you give the names of any of the parties who brought complaints to you ?

A. I don't remember now. I never kept that record and I don't really—— It is so long I don't remember now. I remember of having reported the matter to the police jury at the time.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of being filed in evidence, a certified copy of a resolution of the police jury of the parish of Saint Bernard under date of January 10th, 1898 and now tendered to counsel for the State of Mississippi a certified copy of said resolution in accordance with the terms of the agreement between counsel which said document is now for identification to be marked " Document No. 1."

Q. Did you take any action in connection with the resolution which has just been referred to ?

A. Yes sir; I sent an expedition——

By Judge GUION :

Q. Just read the resolution and see whether you are testifying concerning the resolution.

(Witness reads resolution.)

273 A. Yes sir.

By Mr. DYMOND :

Q. Please state in detail what you did in connection with this resolution marked " Document No. 1 ? "

A. I appointed several special deputies, deputy sheriffs, to go with that expedition.

Q. Please give the names of the parties who went on the expedition ?

A. I remember now, Raymond Roberto.

Q. Is he alive ?

A. Yes sir. Alcide Gutierrez.

Q. Is he alive ?

A. Yes sir. Albert C. Gutierrez.

Q. Where is he ?

A. He is now in the parish of Saint Bernard.

Q. What is his condition?

A. He is very sick, he is in a dying condition.

Q. Next?

A. I don't remember which was the other one. Albert Estopinal. He is dead, he died some years ago.

Q. Did this expedition start out?

A. Yes sir.

Q. What were your instructions to the expedition?

A. My instructions from the president of the police jury was to appoint deputy sheriffs and that they should notify the non-residents who were fishing in Louisiana waters, fishing oysters.

Q. Who was president of the police jury at that time?

A. Lieut. Governor, Albert Estopinal. That was my instruction, to notify them not to fish oysters within the limits of Louisiana, in Louisiana waters, that we would prosecute them according to law, to our laws.

By Judge GUION:

Q. Did you designate what you considered to be Louisiana waters?

274 A. I did not know exactly myself. We sent a man that was supposed to know.

Q. Who was that?

A. Mr. Roberto, he was supposed to know something about it.

Q. Mr. Raymond Roberto?

A. Yes sir.

Q. Are you able to tell where they were fishing?

A. My return was they were fishing in Louisiana waters, that was my return.

By Mr. DYMOND:

Q. Do you know what subsequent developments took place as a result of this expedition?

A. Well, the subsequent consequences I received a letter from Mr. Neville who was then district attorney of Hancock county.

Q. Of what State?

A. Of the State of Mississippi.

Q. Have you got that letter?

A. No sir.

Q. What has become of the letter?

A. I destroyed it, I don't remember, I may have it home, I don't remember what I did with it. And he asked me to meet him. He came down—

Q. Are you prepared to state that you can produce that letter?

A. No sir.

Q. Will you make a search for it?

A. I can make a search for it but I don't think I have the letter.

By Judge GUION :

Q. What was the result of your receiving the letter ?

A. The result was that we agreed, he agreed to meet me.

Q. Did you meet him ?

A. Yes sir.

Q. Where did you meet him ?

275 A. At the slaughter house in the parish of Saint Bernard.

Q. Mr. Neville came over here ?

A. Yes sir.

Q. He was then district attorney in Mississippi ?

A. Yes sir.

Q. Of what district ?

A. Hancock county. He was in Biloxi then, Mississippi.

Q. And you, as sheriff of Saint Bernard, and he, as district attorney of that district, met at the slaughter house in the parish of Saint Bernard ?

A. Yes sir.

Q. What took place at that interview ?

A. That it was agreed between him and me that he should meet our district attorney, Mr. Albert Estopinal Jr. in New Orleans some time, I don't know what date.

Q. For what purpose ?

A. To discuss this oyster matter. And it was decided there with me and himself, we agreed—after that he saw Mr. Estopinal, but we agreed to that, to go in a friendly suit between the State of Mississippi and Saint Bernard to decide the limits between Mississippi and Louisiana.

Q. When was that ?

A. That was in 1898.

Q. Shortly after this expedition went out ?

A. Shortly after this expedition.

Q. And that expedition you say went out under your authority ?

A. I appointed the officers to attend to it under the authority of the president of the police jury, first and—

Q. Subsequent to the introduction of this resolution ?

A. Yes sir.

276 Mr. McCLURG : Counsel for The State of Mississippi reserves an exception to the statement of any agreement between the district attorneys mentioned by the witness in regard to bringing a friendly suit,—

A. I didn't say it was an agreement between me and him, it was an agreement between him and our district attorney.

—because which testimony is incompetent they having no authority to bring such suits nor to agree that any controversy be settled that way.

By Judge GUION :

Q. Did I understand you to say there was no agreement between you and Mr. Neville?

A. No sir, between Mr. Neville and the district attorney.

Q. Were you present?

A. I don't think I was.

Q. I didn't know that; I thought you were present at the interview.

Q. He told me he——

Q. The only interview you had with him was with reference to the alleged violation of the oyster laws of this State?

A. Yes sir.

Q. And at that interview he told you he would see the district attorney of your district?

A. In fact I made an agreement to fix to meet the district attorney and they met in New Orleans shortly after.

By Mr. McCLURG :

Q. Let me ask the witness this. You stated about a report of this expedition; was that report made in writing?

A. What report?

Q. Was the report of this expedition that you sent out, made in writing?

A. No sir; I never made any report in writing.

By Mr. DYMOND :

Q. Where is the present court house of the parish of Saint Bernard located?

A. In Terre Bœuf, on Bayou Terre Bœuf.

277 Q. What is the place called?

A. Called Terre Bœuf, call it Saint Bernard.

Q. Where was it located previous to the present court house?

A. At the slaughter house. I don't want to be misconstrued. The court house was located there for years and years, and then it was removed to the slaughter house, after the civil war it was removed to the slaughter house. The court house was destroyed by fire and then it was removed back to Saint Bernard.

Q. When was the court house destroyed by fire?

A. In 1883.

Q. Where was the court house located that was destroyed by fire?

A. At this slaughter house.

Q. Is that in the upper end of the parish of Saint Bernard?

A. Yes sir.

Q. What was the result of the fire on the records which the court house contained?

A. Most all the papers were destroyed at the fire; all the records except a few.

Q. Were the conveyance records of the parish of Saint Bernard destroyed?

A. All except one book, one conveyance book I think that is left.

Q. Were the records of the clerk and court of the parish of Saint Bernard destroyed?

A. All destroyed.

Q. Were the records of the assessor of the parish of Saint Bernard destroyed?

A. I don't remember; the book of assessment was destroyed, the old books previously filed in the clerk's office were destroyed, yes sir.

Q. Was it the custom in the parish of Saint Bernard to keep all of the parochial papers and records in the court house?

A. Yes sir, as it is now.

Q. And were all of those records and papers and documents destroyed?

A. Yes sir; we had no vault in that court house, it was a wooden court house built without any vault whatsoever.

278 By Judge GUION:

Q. Were all the records taken to that court house from the court house near Terre Bœuf at the time you say the records were removed?

A. Every particular paper, there was not a thing left.

Q. You are satisfied there was nothing left at the old court house down at Terre Bœuf?

A. Nothing whatever.

Q. And everything was brought up to the court house at the slaughter house?

A. Yes, sir, in fact the court house was left open all the time.

Q. Which one do you mean?

A. The old court house.

Q. At Terre Bœuf?

A. Yes sir, nothing was left there whatever, not a paper, everything was brought up here.

By Mr. ZACHARIE:

Q. Then, as I understand you, with the exception of this one conveyance book there are no records, maps or other official documents of the parish of Saint Bernard in existence to 1883?

A. Not that I know of. If there is it does not belong to the parish, it is not in the hands of the parish authorities.

By Judge GUION:

Q. There are no public records existing?

A. No sir, in fact after the fire the legislature passed a law, there was a law passed by the legislature authorizing any person that had real estate, property, in the parish, giving them such time to record their act of sale so as to have a record of that; I think a year or so it gave them to record all their acts of sale so as to have records, and a good many of them have done it.

By Mr. ZACHARIE :

Q. That was done in order to replace—

279 A. Some of the old records.

Q. The burned records?

A. Yes sir.

Cross examination.

By Mr. McCLURG :

Q. I notice in the certified copy of the resolution filed with your deposition herein, that the knowledge came to the police jury of a great number of citizens of other parishes and the State of Mississippi fishing oysters within the limits of Saint Bernard parish. Was there an ordinance of the police jury or law that prohibited the citizens of other parishes from taking oysters in the waters of Saint Bernard?

A. I never understood it to be so; it was to be a law prohibiting other citizens from other States, not from other parishes; that is the way I understood it to be, from other States not other parishes, we never attempted to prevent any citizen from another parish, not through me, from fishing oysters.

Q. This expedition that you sent out, if I remember correctly, you said they were not instructed as to where the boundary line was between the two States?

A. Well, as much as we could, not exactly because I didn't know the boundary, we took a man that we supposed knew something about the boundaries, he was a fisherman all his life, he was born and raised in that country, so we supposed he knew something, that was the best we could do.

Q. This resolution required of that expedition an intelligent report of all the information gathered to be made to the police jury, and you state that there was no written report?

A. No sir; the report was made to the president of the police jury and to the police jury but mostly to the president and he represented the matter before the police jury and explained the thing to the police jury more fully.

Q. But was it not in writing?

280 A. I don't remember. I can't tell exactly, I don't think it was, it may be but I don't remember, it is so long that I don't remember really, I don't think it was made in writing.

Q. And as to the actual existence of violation of any of the oyster laws of this State or the ordinances of St. Bernard parish by citizens of Mississippi you have no actual knowledge personally?

A. Myself personally, no sir, except by information.

ALCIDE GUTIERREZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. What official position in the parish of Saint Bernard, if any do you now hold?

A. I am secretary of the police jury.

Q. How long have you been secretary of the police jury of the parish of Saint Bernard?

A. Ever since 1892.

Q. Were you secretary of the police jury in January 1898?

A. Yes sir.

Q. Will you please look at this document which has been offered as Document No. 1 and state whether that is your signature to it on the certificate and whether it is a true copy of the resolution as it purports to be?

A. Yes sir, it is.

Q. Was the expedition made as contemplated by that resolution?

A. Yes sir.

Q. Did you accompany that expedition?

A. I did.

Q. How many expeditions were made?

A. There were two made.

Q. What was the result of the first expedition?

281 A. Well, the first expedition, we went only to the mouth of Bayou Terre Bœuf and returned owing to the inclemency of the weather.

Q. How soon thereafter was the second expedition made?

A. 20 or 30 days after.

Q. Did you accompany the second expedition?

A. Yes sir.

Q. What was the route of the second expedition?

A. Well, we went by way of Bayou Terre Bœuf down to the Gulf; I don't remember the names of those lakes back there.

(Witness has before him now map No. 7.)

A. We went in through the bayou here and we —

Q. As I understand it you started out through Bayou Terre Bœuf?

A. Yes sir.

Q. What body of water did you next enter?

A. Lake Machias we crossed it and then we crossed right over to the mouth of Bayou La Loutre, and we slept there one night.

Q. Thence where did you go?

A. Into Morgans harbor; there we met Mississippi boats fishing, catching oysters, from that point this way we met —

Q. Say which way so the stenographer can put it down.

A. This is east—northeast.

Q. Did you go by the inside route or outside?

A. By the inside route, to Bay Boudreaux and there we met a good many boats there from Mississippi.

Q. Was that in the neighborhood of Three Mile bayou?

A. That is right at Three Mile bayou, that is what they call Three Mile bayou, there is an opening right here in the mouth of Three Mile bayou, right at that mouth was stationed the Josephine Lopez which was a large schooner used to carry oysters across to Biloxi; there were small boats around fishing oysters and loading them into this schooner.

282 Q. Was that south from the shore line from Malheureux point to Isle au Pitre?

A. Yes sir.

Q. Thence, from Three Mile bayou where did you proceed?

A. From there we came on over; we ended our journey and we came over to Shell beach and boarded the train there and came back home.

Q. Did you stop at Nine Mile bayou?

A. Yes sir, that is, we went through Nine Mile bayou, we didn't stop there, there was no necessity, there was nothing there.

Q. Were there many boats from Mississippi fishing in that locality?

A. Quite a number of them.

Q. What was said to those boats and by whom?

A. Well, I was the spokesman of the party and I warned them off, I just told them they were violating the then Louisiana laws, the act of 1896 which prohibited them from fishing in Louisiana waters, and told them if they came back they were liable to be arrested.

Q. In what capacity were you acting at the time?

A. I was acting as deputy sheriff, I was an officer sent down by the sheriff.

Q. Had you been appointed by the sheriff for that trip?

A. Yes sir.

Q. Did you advise them of your official capacity?

A. Yes sir.

Q. Did you show them your commission as deputy sheriff?

A. I don't know that I did, and—I don't know that I showed them my commission, I am not positive as to that, I didn't think it was necessary.

Q. What did these fishermen state in regard to their presence there?

A. Well, they all acknowledged that they were fishing, as they called it, in the Louisiana marsh, and that if they were kept away from there they would actually starve; some of them told me that.

283 Q. Why?

A. There were no oysters anywhere else.

Q. Did you make a report on the return of your expedition?

A. Yes, sir, a verbal report not a written report.

Q. Whom did you make your report to?

A. To the sheriff and to the police jury.

By Judge GUION :

Q. Who was the sheriff?

A. Mr. Nunez our present sheriff.

Q. You spoke just now about a boat lying at the mouth of Three Mile bayou?

A. Yes sir.

Q. It was carrying oysters across to Biloxi?

A. Yes sir.

Q. What State is Biloxi in?

A. The State of Mississippi. That was the Josephine Lopez. It was a boat of that name belonging to Mr. Lopez, Lopez and Ducate.

Q. Who was with you on that expedition?

A. Mr. Raymond Roberto who had charge of the boat, the owner of the boat; and Mr. Albert Estopinal, now dead; and Mr. A. C. Gutierrez, who is very ill.

Q. Too ill to attend as a witness?

A. Oh, yes.

Q. How far east did you go; what was the extreme eastern point that you gentlemen went on that expedition?

A. We went through Lake Karako up, it leads up to Three Mile bayou, somewhere around there.

Q. Were these fishermen, that you saw, from Mississippi, gathering oysters at any point other than Morgan harbor?

A. They were all along here, strewn all along.

Q. You know the court will not know what you mean by all along here?

A. We met some at Morgan harbor.

284 Q. Did you find any up in here?

A. We found a good many in Bay Boudreaux and Lake Karako.

By Mr. ZACHARIE :

Q. How close did you go to Isle au Pitre?

A. Really I don't know.

Q. Did you go within sighting distance?

A. No, we did not.

Q. Then the most easterly point to which you went was what, Lake Karako?

A. Or Morgan harbor.

By Judge GUION :

Q. And you say at the mouth of Three Mile bayou—

A. Yes sir.

Q. —the Josephine Lopez was gathering oysters?

A. She was not gathering—yes sir, she was gathering oysters and other boats.

Q. Where were those other boats furnishing the Josephine Lopez with oysters gathering them?

A. All around there in the Louisiana marsh.

Q. How far from the mouth of Three Mile bayou, about?

A. I could see them all around gathering.

Q. What distance would you say?

A. About a quarter of a mile or so.

Q. South of the mouth of Three Mile bayou?

A. That is, inland?

Q. Inland?

A. Yes sir.

By Mr. DYMOND:

Q. Will you please look at this document which is now for identification marked Document No. 2 and state whether it is a correct copy of a resolution of the police jury and whether your signature is attached to it?

A. Yes sir, this is a correct copy and my signature is attached to it.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce the said document marked "Document No. 2."

Q. Will you please look at this document which for identification is to be marked Document No. 3, and state whether it is a correct copy of a resolution passed by the police jury of the parish of Saint Bernard and if your signature is thereto attached?

A. Yes sir, this is a correct copy.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce said document and it is marked "Document No. 3."

Cross-examination.

By Mr. McCLURG:

Q. Did you find any people from other parishes of Louisiana, fishing in what you thought to be the waters of Saint Bernard on either of those expeditions?

A. I did. I found a few, very small proportion, they came from Orleans, parish of Orleans, from the old basin I suppose.

Q. They were warned to keep out also?

A. No, sir; they were not warned to keep out, but they were told they were not paying the license to the parish and that they would have to pay a license to the parish. They were violating the law also of the State in that respect.

Q. The Mississippians were not permitted to pay the license were they?

A. They were not permitted in the waters at all, not to fish at all.

Q. Can you recall the name of the captain of any of those boats?

A. I could not.

Q. The name of any person—

A. I took their names in writing but I don't know what has become of it, it has been so long since.

Q. You did which?

A. I took their names in writing, it has been mislaid.

Q. Have you any idea where that writing is?

A. No sir; it was a little memorandum, I don't know exactly where I put it, I couldn't lay my hands on it now.

Q. Will you kindly look that up and if you are called back, let us have it.

A. Yes sir, if I am able to find it.

Q. Tell us, if you know, how far it is from Three Mile bayou to the Mississippi shore, due north?

256 A. I don't know.

Q. Your best judgment?

A. It may be 25 miles across or 20, I don't know exactly, I have never crossed there, I don't know.

Q. Don't you think it is less than ten miles?

A. I don't know.

Q. How far is Three Mile bayou from the Saint Bernard court house?

A. I could not say, I don't know.

Q. Have you any idea how far Nine Mile bayou is from Saint Bernard court house?

A. Nine Mile bayou is about half a mile from Three Mile bayou.

Q. Have you any idea how far it is from the north end of Isle au Pitre from the Saint Bernard court house?

A. No sir.

Q. You suppose that Three Mile bayou and Nine Mile bayou and the places where these Mississippi boats were found fishing, must have been about 25 miles from the Mississippi shore?

A. Well, I don't know, I can't say positively, I don't know.

Q. Your best judgment is that they were that far?

A. What is that?

Q. Your best judgment is that is the distance?

A. My judgment is that all that belonged to the parish of Saint Bernard.

Q. But, you know, I didn't ask you that. I asked you about the distance. We are going to try and get the court to settle that question. But, your best judgment as to the distance—

A. I don't know.

Redirect examination.

By Judge GUION :

Q. Mr. Raymond Roberto was with you ?

A. Yes sir.

Q. He knew that country down there ?

A. Yes sir.

Q. Or professed to know it ?

A. He did know it pretty well.

Q. How many times had you been down there ?

A. I never have been there since.

Q. How many times had you been down there previously ?

A. That was my first trip down there.

Q. You have only been there once in your life ?

A. Yes sir.

Q. You went as a deputy sheriff under instructions from the sheriff ?

A. Yes sir.

Q. And Mr. Roberto went for what purpose ?

A. He went to take us down there because we didn't know anything about that country and he knew the country and he was hired for that purpose.

Re-cross examination.

By Mr. McCLURG :

Q. What kind of crafts did you go in ?

A. We went in one of these little luggers, one of these small boats.

Q. Sail or steam ?

A. Sail.

At this stage of the proceedings the hearing was adjourned for tomorrow until 3 p. m.

NEW ORLEANS, April 4th, 1904—3 p. m.

At the same place and at the hour of 3 p. m. the proceedings were resumed pursuant to adjournment.
All parties present.

NOTE.—Mr. Raymond Roberto witness produced by the State of Louisiana not being able to speak or understand the English language, Mr. A. C. Gutierrez was sworn in, by consent of counsel, to act as interpreter for said witness.

RAYMOND ROBERTO, witness sworn and examined on behalf of State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Mr. Roberto, where do you live?

A. I live in Plaquemines parish.

Q. What is the name of the place where you live.

A. I don't know the name of the place, but it is in the parish Plaquemines.

Q. How old a man are you?

A. Fifty-nine.

Q. How far do you live from the parish of Saint Bernard line?

A. Half an arpent, right across the bayou.

Q. On what bayou do you live?

A. On Bayou Terre Boeuf.

Q. How long have you lived there?

A. Some 45 years.

Q. Does Bayou Terre Boeuf divide Saint Bernard parish from Plaquemines parish?

A. Yes sir; it is the dividing line.

Q. What is your occupation?

A. I am a fisherman.

Q. How long have you been a fisherman?

A. Some 45 years.

Q. Do you know the country in the parish of Saint Bernard where the oysters are fished?

A. More or less, I know it belongs to the parish of Saint Bernard.

288 Q. Have you ever fished oysters in Saint Bernard?

A. No sir.

Q. Do you own a boat?

A. Yes sir.

Q. Did you ever go with any one on a trip through Saint Bernard parish on your boat?

A. The trip I made with Mr. Alcide Gutierrez.

Q. Who was with you on that trip?

A. Mr. A. C. Gutierrez, Mr. Albert Estopinal, Mr. Alcide Gutierrez.

Q. What was that trip made for, what was the object of that trip?

A. The object of that voyage was simply to enforce the law. I went with Mr. Alcide Gutierrez, I don't know exactly.

Q. Was it on your boat?

A. Yes sir.

Q. Where did you start from?

A. From Bayou Terre aux Boeuf.

Q. Where did you go from Bayou Terre aux Boeuf?

- A. That day we went and stopped at Karako island.
- Q. Where is Karako island?
- A. In Saint Bernard; it is right at the mouth of the bayou, at Point La Fortuna.
- Q. Which direction did you go from Point La Fortuna?
- A. To Point Chicot. We went to New Rigolets, they call it.
- Q. Then where did you go, through the New Rigolets?
- A. From there to Point Comfort.
- Q. Then where did you go?
- A. To Bayou Julia.
- Q. Then where did you go, from Bayou Julia?
- A. From there to Karako Campo.
- Q. Is Karako Campo on Karako bay?
- A. I never heard it named by that.
- Q. Where did you go from Karako Campo?
- A. To Three Mile bayou.
- Q. Where did you go from Three Mile bayou?
- A. From there to Nine Mile bayou.
- Q. Then where did you go, from there?
- A. To Shell beach.
- Q. Did you see any boats fishing oysters on that trip?
- A. Yes sir.
- Q. Where was the first time you saw these boats on that trip, fishing oysters?
- A. At Point Comfort.
- Q. Do you know that place by the name of Morgan harbor?
- A. Yes sir.
- Q. Is that the same place?
- A. Yes sir, that is the same place.
- Q. Where did those boats come from?
- A. From Biloxi.
- Q. Were there many boats?
- A. There, there was but one.
- Q. Was the boat fishing oysters?
- A. Yes sir.
- Q. How do you know that boat was from Mississippi?
- A. Because they, themselves, told us.
- Q. Where did you next see boats fishing oysters?
- A. Tobacco bayou, Cat Fish pass.
- Q. Was that near Karako Campo?
- A. Yes sir, that is right near Karako Campo.
- Q. Did you see any boats fishing oysters in the bay by Karako Campo?
- A. One.
- Q. Where was that boat from?
- A. From Mississippi, from Biloxi.
- Q. How do you know that boat was from Mississippi?
- A. Because by their answers to our questions as to where they were from.

Q. Did you see any boats fishing near Three Mile bayou, fishing oysters?

A. Yes sir. There were a good many of them fishing there.

Q. Where were those boats from?

A. They were loading there for Biloxi.

Q. How do you know they were loading oysters for Biloxi?

A. Mr. Lopez's boat was there.

289 Q. What Mr. Lopez is that?

A. The man who has this factory across the lake at Biloxi, I don't know his initials.

Q. What kind of factory?

A. I don't know.

By Judge GUION:

Q. Is it cotton goods, fish or what?

A. For oysters.

By Mr. DYMOND:

Q. Did you see a boat of Lopez in Three Mile bayou?

A. Yes sir; I saw it.

Q. What was the name of that boat?

A. I don't know; I didn't pay any attention. Mr. Alcide Gutierrez took the name.

Q. Did you hear any of the talks of Mr. Gutierrez with the Mississippi oyster fishermen, at that time, on that trip?

A. I heard a conversation, but, as I did not understand English, I did not know what they were talking about.

Q. Do you know where Isle au Pitre is?

A. I know that it is further out than Grand pass, way out yonder.

Q. In which direction, east or west of Three Mile bayou?

A. I never paid any attention to that.

Q. Do you know where Petite pass is?

A. What we call Petite pass finds itself in Lake Borgne.

Q. Were these boats in the Louisiana marsh?

A. I don't know because I never measured it.

Q. Were they south of the shore line running from Petite pass to Isle au Pitre?

A. Yes sir, very much south.

By Mr. ZACHARIE:

Q. How close did this party go to the Isle au Pitre?

A. I don't know, I could not say.

Q. Well, about?

A. From five to six miles.

Q. What was the furthest point to the east that this party or expedition went?

A. To Point Comfort.

Q. But on the northern shore, the shore facing Mississippi, what was the furthest point you went, east towards the gulf of Mexico?

A. We were cruising about, here and there, and we didn't know altogether.

By Judge GUION :

Q. Did you go further east than Three Mile bayou ?

A. We found ourselves a little to the east of Three Mile bayou.

Q. How far from where Three Mile bayou enters the marshes to the east ?

A. Perhaps six to seven miles.

Q. To the east ?

A. Yes sir.

Q. Did you see any vessels there catching oysters ?

A. Yes sir, we saw boats there, all around there, Karako Campo.

Q. Why did you go with that expedition ?

A. Because I was sent, I was asked to go.

Q. Do you know why you were sent ?

A. I was sent about this oyster question.

Q. Was it known that you knew this territory down there ?

A. Yes sir, because I knew that territory better than any one else.

Q. Who sent you ?

A. I was sent by Albert Estopinal.

Q. Which one, father or son ?

A. The father.

Q. The present lieut. governor ?

A. Yes sir.

Q. Did the sheriff, Mr. Nunez, say anything to you about going down there with Mr. Gutierrez and others ?

A. I was a deputy sheriff, I was made a deputy sheriff.

Q. By whom ?

A. A man by the name of Jago Morales was sent by Albert Estopinal and Mr. Albert Estopinal made me a deputy sheriff.

Q. Did Mr. Esteve Nunez, the sheriff, send you down there
290 with Mr. Gutierrez ; did you have any talk with him ?

A. No sir.

Q. And it was Mr. Albert Estopinal ?

A. No ; Mr. Estopinal never spoke to me ; in person, but he sent a man.

Q. Who was the man ?

A. Jago Morales.

Q. What did Jago Morales tell you he wanted you to do ?

A. He wanted me to go down on that trip.

Q. Were you sent there to show where Louisiana territory was, or not ?

A. No sir, because I did not know where the boundary was ; because I knew more or less what belonged to Saint Bernard, from Nine Mile bayou to the south.

Q. Were you sent there because you claimed to know the territory of Saint Bernard ?

A. Most places I don't know by name ; I know it from memory.

Q. Were you supposed to know the parish of Saint Barnard in that section of country?

A. No, I don't know it.

Q. I don't ask you whether you knew it; I ask you whether you were sent down because you were supposed to know the territory down there?

Mr. McCLURG: We make the exception that the question is irrelevant; that after having stated affirmatively he did not know the locality or its name it is immaterial that he was sent there from the supposition that he knew it or not.

A. I didn't know, only I know I was sent down for the oyster question, that is all, nothing was explained to me.

Q. When was that that you went down there?

A. I don't remember the date.

Q. Do you remember the year?

A. No sir.

No cross examination.

ALBERT ESTOPINAL, JR., witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your official position at present, in relation to the parish of Saint Bernard?

A. I am district attorney of the 29th district which includes Saint Bernard.

Q. And what other parish?

A. Plaquemines parish.

Q. How long have you been in that position?

A. Since 1892.

Q. Are you, in your position, charged in any way, with seeing to the enforcement of the State laws in the district over which you have control as district attorney?

A. Yes sir.

Q. Were you aware of the fact that there was a law passed by the legislature concerning the oyster industry of the State of Louisiana?

A. I was.

Q. Did you ever have occasion to consider the question of oyster fishermen from Mississippi fishing oysters in the parish of Saint Bernard?

A. Yes sir, I have.

Q. When was that?

A. In the early part of 1898.

Q. What was the occasion that led you to consider that?

A. This whole thing was provoked by an expedition that was sent out at the instance of the police jury.

Q. Of what parish?

291 A. Parish of Saint Bernard.

Q. As based on what?

A. As based on complaints made by fishermen, but who they were I don't know, but some complaints had been made to the authorities and the police jury instructed the sheriff by resolution, I believe, to send an expedition down there to enforce the law and collect licenses from native fishermen and to drive off Louisiana territory all fishermen who did not belong to the State, in other words, Mississippi, Alabama, Texas or Florida.

By Mr. McCLURG:

Q. Your police jury is what we call board of county commissioners?

A. Yes sir, they have the same power. And I remember, if you will allow me to go along, this expedition went out and shortly afterwards I got a message of some kind, whether it was in writing or whether an interview was arranged for me with Judge Neville of Biloxi, I don't quite remember. But the fact remains that I met Judge Neville on two occasions or three, twice here in New Orleans and once in Biloxi.

Q. Who was Judge Neville, will you please state?

A. He was, at that time, the district attorney, if they call him such, over in Hancock county, I believe, State of Mississippi.

Q. Did he so represent himself to you?

A. Yes sir; it was in his capacity as prosecuting or district attorney over there that he consulted with me in regard to this matter.

Q. Had this matter been referred to you?

A. No, not particularly. My attention was first called to the matter, in fact I became—I was brought into the matter by Judge Neville, he requested an interview on the subject with me and my recollection of it is that he came over here and we lunched together over at the Cosmopolitan hotel. I think my father was with us at the time, right across on Royal street, and this whole matter was gone over with Judge Neville. Judge Neville at the time went on to say that the authorities of the parish of Saint Bernard had sent out an expedition and that the officers of this expedition had attempted to arrest some of their people and that it had caused bad blood and that he was very much in fear that a conflict of some kind, an armed conflict possibly, would occur between the authorities of Saint Bernard and the Mississippi fishermen. I knew at the time that the officers of Saint Bernard on this expedition had attempted to drive the Mississippi fishermen off of these marshes and that they had refused to go off; but, Judge Neville's statement in regard to a possible conflict in the event of our insisting upon the enforcing of the Louisiana law in that territory I knew nothing of. The Judge suggested, either at this conference or at another, because there were two or three conferences between Judge Neville and myself, that it would be best to hold the matter in abeyance for some time, that

the authorities of Saint Bernard do nothing for a while, and that in the meantime he, Judge Neville, or myself, or the attorney general, should institute proceedings in the United States court, a friendly suit, by which the boundary line between the State of Louisiana and the State of Mississippi might be ascertained. I acquiesced to that proposition and I know that nothing was done about this matter after that agreement was entered into between Judge Neville and myself; in other words, there was no more attempt on the part of the authorities—no further attempt on the part of the authorities of Saint Bernard to enforce the law or drive the Mississippi people away from there, nor was this suit instituted and the whole matter dropped right there.

Q. Until when?

A. Until about two years ago when it was again agitated, which has brought about this suit.

Q. By this suit do you refer to the pending suit between the State of Louisiana and the State of Mississippi?

A. Yes sir.

Q. In the United States Supreme Court?

A. Yes sir.

292 Q. In your conferences with Judge Neville, did he indicate that this armed resistance would come from the fishermen of Mississippi or from the authorities of Mississippi?

Mr. McCLURG: We must except to that question on the ground that the witness has not stated anything about an armed resistance or indicated from which side the conflict would come, and we insist that the witness be not led; let him state the facts as he knows them.

Question withdrawn.

Q. Did you make any statement to Judge Neville that would indicate the intention of the State of Louisiana or the parish of Saint Bernard to enforce the State oyster law in what the parish of Saint Bernard considered to be its boundaries?

A. Yes sir.

Q. What response did you receive from Judge Neville in answer to that suggestion on your part?

A. Judge Neville then stated he was afraid there would be a collision between the Mississippi people and the Louisiana people.

Q. Did Judge Neville indicate in any way what he meant by the expression Mississippi people?

A. No; but I drew an inference from his statement—

Mr. McCLURG: We want no inferences but facts.

Q. Are you able to give any reply in his words?

A. No sir, I am quite sure I cannot. I do know he said he feared very much there would be a collision between the Louisiana and Mississippi people.

Q. Did he use the word people?

A. To the best of my recollection he did.

Q. Did he in any way give any expression as to what the attitude of the Mississippi authorities would be in the event that Louisiana or the parish of Saint Bernard persisted in her contention?

A. Yes sir, he, as district attorney, was quite determined to oppose the contention of the Louisiana people.

Q. He, as an officer, district attorney, of that district said he was quite determined to oppose the Louisiana contention?

Mr. McCLURG: The State of Mississippi reserves exception to this upon the ground that the district attorney of Mississippi had no authority under the laws of that State, to interfere in any manner or to suggest any prosecution or settlement of this case; that such matters, under the laws of Mississippi, the grand juries, have exclusive jurisdiction of, and a district attorney has no authority except to advise grand juries upon their request, and to prosecute persons indicted by the grand juries. Hence the foregoing questions and answers are excepted to as incompetent and irrelevant. And in addition to this objection we are compelled to except to the leading character of the interrogatories propounded to this witness; we think he ought to be permitted to state the facts.

Q. Did he in any way, indicate the extent to which this resistance would be carried?

A. My recollection is, that he stated that there would be an armed conflict. That there would be blood shed. The fact is, that the judge, that the district attorney, Mr. Neville, appeared to be very anxious and very zealous to do something for the Mississippi people, and as I said a moment ago he went on to state that the Mississippi authorities would contest any such right of the State of Louisiana as contended by Louisiana represented in this particular instance by the parish of Saint Bernard.

By Judge GUION:

Q. You say that Judge Neville is the one who provoked these interviews?

A. Yes sir.

Q. And not yourself?

A. No sir.

Q. Did he say what caused him to interview you on the subject?

A. Yes sir; these interviews were brought about by this expedition.

Q. What expedition?

A. The expedition of which we have heard about, sent out by the police jury of the parish of Saint Bernard or at the instance of the police jury, sent out by the sheriff.

Q. Did he mention that to you?

A. Yes sir.

Q. What did he say to you with reference to that particular subject?

A. He said that these Saint Bernard authorities had gone over to

these points on the coast in the Louisiana marshes and had attempted to drive away from there Mississippi people who were fishing oysters.

By Mr. DYMOND:

Q. Was the locality that he referred to, south of the shore line extending from Petite pass to Isle au Pitre?

A. That I can't say.

By Mr. ZACHARIE:

Q. During these interviews with District Attorney Neville, did he state whether he knew, or not, by what authority this expedition was sent out; if so, by whom did he state?

A. I don't know that he stated that he knew by what authority the expedition was sent out, no sir.

Q. Did he speak, in any way, as if he knew that this was an official proceeding by the officers of—

A. I judge so, yes sir, he spoke—yes, there can be no doubt about it because he stated to me that the officers, deputy sheriffs or sheriff's officers of the parish of Saint Bernard had attempted to drive Mississippi people away from there.

Q. You remember that distinctly?

A. Yes sir, oh, yes.

Cross-examination.

By Mr. McCLURG:

Q. We understand Mr. Estopinal that you were at that time the prosecuting officer for Saint Bernard parish?

A. Yes sir.

A. And that the expedition was sent out as stated in the resolution prepared by your police jury?

A. Yes sir.

Q. Originated from rumors of fishermen that people from other States and other parishes than Saint Bernard, were violating the laws of this State by fishing in her waters?

A. Yes sir.

Q. I believe you were present this morning when the sheriff, Mr. Nunez, testified about sending out the expedition?

A. Yes sir; I was here.

Q. And about having a conference with Judge Neville?

A. Yes sir; my recollection is, while you are on that point, if—will allow me, that the interview between Judge Neville and myself was arranged for by the sheriff. I met Judge Neville after he saw the sheriff.

Q. So the sheriff stated?

A. Yes sir, that is my recollection.

Q. Now, you had heard of no complaints either from the sheriff or the police jury or Judge Neville or others, about Mississippi taking any aggressive action in the matter; she was the defendant?

94 A. I don't know that——

Q. She was rather on the defensive. You people, as I understand it, the Louisiana authorities were driving out what Judge Neville thought, Mississippi people from Mississippi territory?

A. That is what he seemed to contend.

A. And whatever he said was in the shape of a protest against what he looked upon as an aggression on the part of Louisiana?

A. Practically, he seemed to look at it in that way.

Q. He was simply speaking in the defense of these people against his conduct?

A. Yes sir.

Q. Of your own personal knowledge you don't know what territory these people were in?

A. Except in a general way I don't know much about the country; I have been through it once, and in a general way from some slight study of the maps and having gone over the country once I now a little about it.

Q. Are we to understand that the allegation in Louisiana's bill of complaint to the effect that there was a threatened armed conflict between the officers of Saint Bernard parish of Louisiana and the officers of Hancock county Mississippi was based upon this Neville interview?

A. Well, that certainly is one ground for alleging it.

OBJECTION.—JUDGE GUION: This question is objected to because the witness is not competent to testify as to the conclusions or inferences in the bill of complaint which was prepared by the attorney general of the State.

Q. Are you the Albert Estopinal that appears as one of the counsel in this case?

A. Yes sir.

Q. You had something to do with the framing of the bill of complaint?

A. In a very slight measure if at all, as the attorney general states.

Q. You conferred with your attorney general?

A. Yes sir.

Q. Gave him the information about this Neville interview?

A. Yes sir.

Q. Now, then, I will ask you to say if you have any information other than the Neville interview upon which the charge in your bill of complaint to which I have referred was based?

A. I, personally, have none except that I repeat, at the time of our interview, the interview between Judge Neville and myself he was very determined and very serious about the assertion that there would be a conflict between the people of Mississippi and the people of Louisiana.

Q. Did you know at that time, what authority Judge Neville had to act in that matter under the laws of Mississippi?

A. I did not know, but he spoke as if he had, and if he did not he assumed it.

Q. Do you know of your personal knowledge of any real danger about the time mentioned in the bill of complaint of any armed conflict between the officers of your State and ours?

Q. Of my personal knowledge I do not know and could not possibly know, but if I were permitted to state what was reported to me by the members of this expedition I could possibly explain. I have some knowledge in regard to that but not personal knowledge; in other words, I have never been out on the waters and never had any discussion or interview with fishermen out there.

Q. We are seeking to escape the danger of wild cat reports and general hearsay about these matters and to get as near as we can to the actual conditions. Now, the time to which you refer, I believe you fixed at 1898. Is that correct?

A. Yes sir.

By Mr. TAYLOR :

Q. When you speak of Mr. Neville's indicating that a conflict might take place, when he put it in that hypothetical way, was it not on the basis that if Louisiana continued her aggression such as has been made, the result would be a conflict. Wasn't that
295 the idea involved in his statement.

A. Yes, sir. I understood him to mean that if the parish of Saint Bernard or the State of Louisiana attempted further to enforce what it thought to be its right there would be a conflict.

Q. He meant simply it would result in resistance to what he considered further aggression on the part of Saint Bernard parish. That was the contingency to which he referred when he said there would be a conflict?

A. My understanding was that Judge Neville meant if the authorities of Saint Bernard attempted further to enforce its rights that there would be a conflict with the Mississippi people.

Redirect examination.

By Judge GUION :

Q. You have given us to understand that there was one expedition that went out into this Saint Bernard territory?

A. Yes sir.

Q. And that after that expedition had returned, you had an interview with Judge Neville?

A. Yes sir.

Q. Did I understand you, or not, to say that Judge Neville at the interview or at one of the interviews he had with you, suggested a friendly suit? I so understood?

A. Yes sir, he did.

Q. What was it he said about this friendly suit?

A. Well, when discussing the question of a conflict, that is, of a possible conflict between the authorities of Saint Bernard parish and Mississippi people, he said the best thing you can do in order to avoid that is to hold the matter in abeyance now for a while and let the authorities of Saint Bernard parish make no further attempt to enforce what they conceived to be the law of Louisiana, and we will go into the United States court in a friendly suit and ascertain the boundary line between Louisiana and Mississippi.

Q. After that interview when he thus spoke to you about a friendly suit, was any attempt made by any of the Louisiana authorities or the Saint Bernard authorities, to drive out any of the Mississippi boats in this marsh?

A. No sir; there was no further attempt made on the part of the authorities here to drive them off.

Q. Why not?

A. Well, I don't remember the occasion, but I no doubt reported the result of my interview with Judge Neville to the authorities down there and I having acquiesced in the suggestion of Judge Neville I advised the authorities down there to hold everything up, then, in abeyance, not to endeavor any further attempt to drive out these people, that this friendly suit would be instituted and pending the institution of this suit the authorities did nothing on my advice, you see, but the suit was never instituted.

By Mr. DYMOND :

Q. Was there not a suit instituted in the United States Supreme Court by the State of Louisiana?

A. I have referred now to the suit suggested by Judge Neville at the time. Subsequently the present suit was instituted in the United States Supreme Court.

Q. Who was to have brought the suit that Judge Neville spoke of?

A. The attorney general of the State, at that time?

Q. Who was that?

A. Mr. Cunningham.

Q. You are speaking of Louisiana, are you?

A. Yessir. Judge Neville led me to believe that he had authority to do likewise, or to represent the State of Mississippi in a suit of that character.

By Mr. ZACHARIE :

Q. According to the understanding that you had with Judge Neville who was to institute this suit?

A. Who was to institute the suit?

Q. The State of Mississippi or the State of Louisiana?

296 A. I think—well, I don't know that that was decided upon; if it was I don't remember.

Q. And you say that that was the reason for the agreement by

which the authorities of the parish of Saint Bernard rested from any further attempt?

A. Yes sir, that suspended all further action, on that account, pending this suit which was never brought.

By Judge GUION:

Q. Was not the suit instituted as soon as the attorney general of the State now in office, was informed of the facts and notified by the governor to bring this suit?

A. Yes sir.

At this stage of the proceedings the proceedings were adjourned by the commissioner to be resumed on April 5th 1904 at the same place at the hour of 10:30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 5th, 1904—10:30 a. m.

Pursuant to adjournment, the proceedings were this day resumed.
Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, attorney general of the State of Louisiana.

Mess. F. C. Zacharie, John Dymond, Jr., and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. William Williams, attorney general of the State of Mississippi.

Hon. Hannis Taylor, associate counsel for the State of Mississippi.

E. E. NUNEZ, witness re-called on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Judge GUION:

Q. You were a witness yesterday?

A. Yes sir.

Q. And you testified that you had sent Mr. Raymond Roberto with certain other parties down into a certain country for the purpose of notifying Mississippi fishermen to leave that territory and to quit fishing oysters?

A. Yes sir.

Q. I understood Mr. Roberto, yesterday, to state that you had no conversation with him on that subject, will you please state what took place and what you did in reference to your sending Mr. Roberto?

A. Mr. Roberto is correct as to that part. I sent my deputy sheriff to him, a regular deputy sheriff there, with a commission and

told him to arrange the matter with him to go out on that expedition with his boat, etc.

297 Q. What was the name of that deputy sheriff?

A. Diego Morales.

Q. What was your object, Mr. Nunez, in selecting Mr. Roberto as a part of that party that you sent down there?

A. My object was that I was under the impression and we all were, we understood Mr. Roberto to be well acquainted with that part of the country where we sent him, being a fisherman all his life we were under the impression and belief that Mr. Roberto knew all that country, in fact he went there and he could go further out and come back easy from there, he knows all that country, whether he knows it by names, I don't know but he knows that country; that is the reason we picked him out.

Q. Then, your idea in selecting Mr. Roberto as I understand it, was that you understood that he knew that whole country and knew where the Louisiana territory was?

A. Yes, sir, he was familiar with that country, with that part of the territory.

Mr. TAYLOR: We desire to note an exception to these questions on the ground that Mr. Raymond Roberto has testified that he had no such knowledge as the sheriff imagined he had. He has already testified that he was not in possession of that knowledge. It is entirely irrelevant what misconception the sheriff might have had.

By Mr. DYMOND:

Q. Are you aware of the existence of an official map of the parish of Saint Bernard?

A. Yes, sir, I am aware of it, we have an official map of the parish.

Q. Where is that official map usually kept?

A. At our court house in Saint Bernard parish.

Q. Was that map completed and in the court house at the time this expedition was sent out by you in January or February 1898?

A. I don't remember about that; I don't remember exactly when it was completed, but I think it was in 1898.

Q. Do you remember whether the map was in the court house at that time?

A. I don't remember.

Q. I refer, Mr. Nunez, to the map made by Mr. H. C. Smith?

A. Yes sir.

Q. Is that the map you have reference to?

A. Yes sir, that is the map.

No cross examination.

Lieut. Governor ALBERT ESTOPINAL, witness on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. What is your name?

A. Albert Estopinal.

Q. Where do you live?

A. In the parish of Saint Bernard.

Q. How long have you lived there?

A. Fifty-nine years.

Q. All your life?

A. Yes sir.

Q. What official position do you now occupy?

A. I am lieut. governor of the State of Louisiana.

Q. Have you occupied other official positions during your life?

A. Yes sir.

Q. Will you please state what?

A. I have been sheriff of the parish of Saint Bernard; I have been a member of the police jury for many years and a member of
298 the General Assembly of Louisiana for 24 years.

Q. What time did you enter into office as sheriff of the parish of Saint Bernard, about?

A. In December 1872.

Q. December 1872?

A. Yes sir.

Q. How long were you sheriff of the parish of Saint Bernard?

A. Four years, from 1872 to 1876.

Q. Can you state, if any complaints were made to you, during your incumbency of the sheriff's office as to non-residents of the State fishing oysters in the territory claimed by Saint Bernard?

A. I can't say distinctly how many times, how many complaints were lodged with me, but there were frequent complaints by residents of the lower section of the parish of Saint Bernard contiguous to what is called the oyster territory.

Q. Could you state about what time these complaints were made to you?

A. Well, while I was sheriff, '74, '75, along there, and often afterwards, during my incumbency as president of the police jury.

Q. Can you give us the names of any persons who made these complaints?

A. One, yes, I remember distinctly, old Doctor Albrecht, he was a prominent citizen down there and owned property and his estate is there yet.

Q. Is he alive?

A. No sir, he is dead. But Captain Ruiz who is to testify before this court, he made frequent complaints.

Q. During that time?

A. Yes sir.

Q. Doctor Albrecht is he living?

A. No sir, he is dead.

Q. What was the tenor of these complaints?

A. They said that fleets of boats were fishing, were carrying away the oysters from the reefs just below or in the neighborhood of Isle au Pitre, in that territory contiguous to that, east of that and west of that even. They came sometimes inland, in some of the small lakes there back of what is called La Chinchu.

Q. Do you know how far to the eastward in the parish of Saint Bernard these complaints were made about?

A. No sir, I could not say to what territory exactly they alluded but they claimed, these parties, as we all claim that all that part east of Bayou La Loutre and extending northeasterly, as far as the coast line, is Louisiana territory, we always regarded it as such.

Q. What was done with these complaints?

A. Well, no attention was ever paid to them or, rather, there was no authority, or the matter was reported to the police jury, it was supposed to be the only body having the authority to control such matters, having control of such matters, but nothing was ever done officially.

Q. Do you know why the police jury and the officers of the parish yourself as sheriff, did not act on those complaints?

A. Well, my impression is, that at the time, there was no law existing on the subject preventing aliens or foreigners from fishing in Louisiana waters.

By Judge GUION:

Q. You had not spoken about aliens or foreigners, you said fleets of boats—

A. Yes, there were fleets from Alabama and Mississippi.

By Mr. ZACHARIE:

Q. Both?

A. Yes sir; there have been there as many as 300 boats at one time, counted in one fleet.

Q. The reason you believe that no action was taken on these complaints, was, that the statutes of Louisiana then in existence did not prohibit non residents from fishing in these waters?

A. Yes sir.

299 Q. Do you know of any other matters which relate to any controversy upon this subject of non residents; did you have any conversations with any of these Mississippians or persons outside of the State at any time?

A. Well, later, I think about 1898 I had, I met Mr. Neville from Mississippi who had a conference with my son the district attorney, I was present at one of their conferences.

Q. Can you state in your own way, as near as you can, what transpired at that conference?

A. It was just after that, we, or the police jury or Saint Bernard parish had sent out an expedition to order away these people from Mississippi who were then fishing on Louisiana territory and it created quite an alarm; our people went down there with instructions to warn them off and they offered resistance, or rather they said they wouldn't get off except by force which they were ready to resist and as a consequence of this, this interview took place here. Mr. Neville either in an official capacity or representative of these fishermen, I don't remember, came over here and met the sheriff and the sheriff suggested that he see the district attorney.

Q. Who was then the district attorney?

A. My son, Mr. Albert Estopinal Jr.

Q. The gentleman who testified yesterday?

A. Yes sir.

Q. Albert Estopinal Jr.?

A. Yes sir. I was present at one of these interviews, I believe there were two of them, and after discussing the subject it was agreed that if it were best, a friendly suit might be brought between the two States; I don't know what methods they were going to use.

Q. What was the contention of Mr. Neville?

A. He contended that this territory had never been, or, he contended that it belonged to Mississippi as much as it did to Louisiana in his opinion. That these people had been fishing there for a great many years and that they did not know they were on Louisiana territory, they supposed they were on Mississippi territory.

Q. What was Mr. Neville's suggestion, if any, in regard to action in the premises?

A. He suggested that some of the Mississippi fishermen be arrested, if I remember right, and that that would be a means of bringing the matter before the courts.

Q. Was there any suggestion made as to a *modus vivendi* or maintaining things in their present status. Did you contemplate action through the courts?

A. I don't remember distinctly, I can't remember that. I would not state it as a fact, that he suggested any *modus vivendi*.

Q. Did Mr. Neville indicate in any way, what method of resistance these Mississippians would adopt?

A. No sir; he did not; but the inference was to be drawn that they would resist by force if they were attacked.

Q. Were there any legal proceedings, and if so, what were they, instituted in this matter, up to the bringing of this suit?

A. No sir. If you will allow me, it might be the proper moment now, to state that as a result of these conferences this thing was—stirred up this dispute, and some of us interested in the Louisiana oyster industry down here thought it best to bring together the authorities of the two States of Mississippi and Louisiana, and to try to adjust the matter without even going into court, and Mr. Dymond here and myself and some others called on Governor Heard and explained the situation to him and showed him the importance of the

thing, and he appointed a commission took upon himself the authority to appoint a commission and communicated with the governor of Mississippi asking him to appoint a similar committee which he did and the two committees had several conferences without any result and then it was that the matter was brought into court finally.

Q. Let me come back a little. This expedition which went out from here down there, how came it that this expedition was set on foot and went out?

A. I believe under the law of 1896 it was that we acted oyster law, oyster law, of '98 possibly——

300 Q. '96?

A. In '96 there was an oyster law passed which authorized the collection of licenses and taxes on boats and it was thought that a fairly good revenue could be gotten out of this. An oyster commissioner, I believe the name was, was appointed by the parish of Saint Bernard and he called on the police jury for means to go down and enforce these collections. I don't remember now whether he went out at all under the authority of the police jury or whether it was——

By Judge GUION :

Q. Could you remember if your memory was refreshed by looking at a copy of the resolution adopted by the police jury?

A. Yes sir.

By Mr. ZACHARIE :

Q. You say you don't remember whether the oyster commissioner——

A. I don't remember whether he collected any licenses at all. I think, rather, that he reported that he could not collect them, and that, coupled with the constant complaints, or frequent complaints of the people of Louisiana, fishermen, that boats from Mississippi and Alabama were carrying off oysters, was the reason for sending out these expeditions as there were two of them.

Q. Will you be good enough to examine this document marked Document No. 1 and say what you know about that resolution?

A. Yes sir, I remember——

Q. The passage of such a resolution?

A. Yes sir.

Q. You were president of the board at that time?

A. Yes sir.

Q. And you were present when this resolution was passed?

A. Yes sir.

Q. Will you examine Document No. 2 and offered by the State of Louisiana and state what you know about that document?

A. Yes sir, I know all about it.

Q. Were you president of the police jury at that time?

A. Yes sir.

Q. Governor, you have spoken of two expeditions having gone ?

A. Yes sir ; one didn't amount to much because it turned back, it was driven back by the stormy weather, it reached the mouth of Bayou Terre aux Bœuf and was driven back after several attempts to get out.

Q. The first attempted expedition and the second expedition went out in pursuance of what ?

A. In pursuance of an ordinance or resolution of the police jury ?

Q. The one that you have just examined ?

A. Yes sir.

Q. Do you know who composed that expedition ?

A. No sir. Mr. Alcide Gutierrez was one of the expedition. The men were selected by the sheriff. Mr Roberto who testified here yesterday was also of the expedition, he was the sailing man of the expedition.

Q. Did you as president of the police jury, take part in any of the instructions given to this posse of deputy sheriffs ?

A. Yes sir.

Q. What were the instructions that were given to them ?

A. The instructions were to gather all information they could on the subject of trespassing by Mississippians and other—because there were Alabamians also, reached from Mobile, and to report to the police jury.

Q. Were they instructed as to what to say to these Mississippians or Alabamians or persons from other parishes of the State of Louisiana ?

A. Yes sir ; they were told to warn these people that they were trespassing on Louisiana territory and to keep off.

Q. That was in regard to the people from what portion of the country ?

A. From Mississippi or Alabama.

Q. What were the instructions in regard to people fishing coming from other parishes of the State of Louisiana ?

301 A. They were to be allowed to fish.

Q. On what condition, if any ?

A. Upon the condition of paying the license imposed by law.

Q. Was there any report made, written or verbal, of this expedition ?

A. Yes sir.

Q. In what form or shape was it made ?

A. The report was that this expedition had found a good many boats out there and had notified them that they were fishing, they were trespassing and they must get off.

Q. To whom was this report made ?

A. To the police jury.

Q. Through whom ?

A. Through one of the members of the expedition, I think through Mr. Gutierrez or Diego Morales, I think he told the chief deputy of the expedition.

Q. Was this report written or verbal?

A. I don't remember.

Q. There is no record, is there, of any written report in the proceedings of the police jury?

A. I don't know.

By Mr. DYMOND:

Q. Governor Estopinal, are you aware of the existence of an official map of the parish of Saint Bernard?

A. Yes sir.

Q. When was that map made?

A. It was made in 1897.

Q. By whom was it made?

A. By Mr. H. C. Smith.

Q. Where was it kept?

A. At the court house.

Q. Was it in the court house in January and February 1898?

A. Yes sir.

Q. At the time this expedition was made?

A. Yes sir.

Q. Was it where any and every body could see it?

A. Yes sir, it was hung up in the sheriff's office.

Q. Was that map intended to show the extent and limits of the parish of Saint Bernard?

A. Precisely, yes sir.

Q. Is that the same H. C. Smith who was parish surveyor?

A. Yes sir.

Q. And is now chief surveyor of the Oyster Commission of Louisiana?

A. Yes sir.

Q. Is that the same map that is in existence today.

A. The same map, yes sir.

Cross examination.

By Mr. TAYLOR:

Q. Did you ever make any personal excursions to this domain in which these boats were, did you ever make any personal investigation as to the localities, lines etc., of all this contested territory?

A. No sir.

Q. You have no personal knowledge whatever as to where what is supposed to be the territory claimed by Louisiana ended or where it began or where the territory of Mississippi began, in that contested area?

A. Not by exploration of the territory, no sir. I only know it by the maps and charts we have.

Q. You have said that when these complaints were made you were sheriff, that no attention was paid to them because there was no authority for any body to do anything?

A. I said that under the existing laws at the time——

Q. At that time there was no authority——

302 A. —people from other States were permitted to fish on this territory without interference.

Q. Then, in referring to your conversation with Mr. Neville you gave the substance of what he said, I can't repeat your exact words, but the substance was that there would be resistance on the part of Mississippi if an attack should be made by the authorities on the part of Louisiana?

A. Whether he used the word resistance I don't remember, but he said there would be a collision.

Q. Didn't you use the term defense or resistance to an attack, in substance of what you just stated in your testimony?

A. I said, if an attempt was made to drive them off they would meet force by force.

Q. If an attempt to apply force was made by the Louisiana authorities through these expeditions——

A. Yes sir.

Q. The only affirmative act of expulsion was made by the Louisiana authorities?

A. There was no attempt at expulsion: it was simply to notify them, those were the instructions given to these expeditions.

Q. The only threat that attempts of expulsion would be made, was made by the Louisiana officials; no expedition was sent from Mississippi?

A. No sir.

Q. Whatever affirmative act looking to expulsion was an act of aggression on the part of Louisiana officials?

A. It was an act of assertion.

Q. Assertion of a right?

A. Yes sir.

Q. And the only response on the part of Mr. Neville speaking for Mississippi was, there would be resistance to such an attempt of expulsion?

A. He said he feared there would be.

Q. You said you have been living 59 years in this parish; being an official and representative of that parish, is there anybody better qualified to know what the extent of Louisiana's claims were than you are. Are you not, by your office and experience as well qualified to know what the claims of the parish as to its limits are as anybody?

A. From time immemorial we have always looked upon the territory that we now claim, as the parish of Saint Bernard.

Q. But you say you have no personal knowledge?

A. I said I have never explored the territory and never have been over it and know nothing of it except by the maps and charts we have that say that territory is Louisiana territory.

Q. Suppose at the time this expedition was sent out, at the time you were president of the police jury, suppose you had been in com-

mand of that expedition and the Mississippians had called upon you to indicate whether this particular locality or that was in one State of the other, could you have indicated the limits to your knowledge?

A. I think I could. Our people went out armed with maps and charts to show these people Louisiana territory.

Q. But you wouldn't have known from knowledge of natural monuments, without referring to papers—

A. No sir, I never navigated the waters, it would have been difficult for me to say.

Q. You stated as I understand that you were president of the police jury at the time of these expeditions?

A. Yes sir.

Q. So that at the time of this expedition, you, an official head of that country, had no personal knowledge where the claim of Louisiana ended and where Mississippi began?

A. No more than any other man would have unless he surveyed the—

Q. You had no personal knowledge of natural monuments where, at the time this threat of expulsion was made, the territory of Louisiana ended and that of Mississippi began?

A. No sir.

303 Redirect examination.

By Judge GUION :

Q. Were you, as president of the police jury, placed in the possession of any information as to where this so-called alleged illegal fishing of oysters was being carried on?

A. Yes sir.

Q. Would you be kind enough to tell us—

A. I can remember a few of the names. In Bay Bodreaux, in Lake Coquille and Lake Calbas and Lake Eloï. I remember those names, but they fished all over that territory from Bay Bodreaux down towards the Gulf.

By Mr. DYMOND :

Q. Was Karako bay mentioned?

A. Yes sir.

Q. Was Treasure bay mentioned?

A. I don't remember about that, but I remember distinctly Karako bay because it was such a peculiar name.

Q. Was Cat Fish pass mentioned?

A. Yes sir, that also; all these points were reported to me by Captain Ruiz who has navigated there, navigated those waters for a great many years and knows every nook and corner there.

Q. Was Dead Man's point mentioned?

A. I don't remember.

By Judge GUION :

Q. Now, as the president of the police jury, when these various points were given you as the places where this fishing of oysters was being carried on by Mississippi, what led you to believe that this fishing was in Louisiana territory not having made, as you say any personal exploration of that country ?

A. Because according to all our official maps, that is recognized as Louisiana territory, we always looked upon that territory as the parish of Saint Bernard.

Recross-examination.

By Mr. TAYLOR :

Q. You say that was always looked upon as part of Saint Bernard parish ?

A. Yes sir.

Q. Had any discussion of the subject ever arisen as to whether it was or not, prior to these expeditions ; did anybody ever raise that question ?

A. I don't believe that anybody ever questioned, ever claimed any right to this territory.

Q. That is not my question. Prior to these expeditions, had there been any discussion or attempt to fix where the lines were ? Had any discussion of it ever arisen before ?

A. Of course what I will state here cannot be substantiated, but my recollection is that a great many years ago, when I was a boy myself, that there was a murder committed in the sea marsh back there and there was a record of it once but that was destroyed by fire in 1874 by the burning of the court house, but a man was murdered down there in the sea marsh and the murderer was taken either to Harrison or Hancock county Mississippi to be tried and that judge there refused to try him because he had no jurisdiction and he sent him back and he was tried in the parish of Saint Bernard. I have tried to get some of the oldest inhabitants there to remember, to recall the fact, but I cannot get them. All the old people who were familiar with that incident have died and there is no record to show it.

Q. As you say it could not be substantiated ; you know it as a mere tradition ?

304 A. I say it could not be substantiated because the records are destroyed and the attorneys did not bring this out because they cannot substantiate it. It is mere tradition and I believe that gentlemen of my age and even younger than myself——

Q. Have you any knowledge of where the location in that marsh was or any knowledge of the spot where this murder was committed ?

A. No sir.

Q. You could not tell where it was ?

A. It must have been——

Q. Even if it was true you would have no knowledge of——

A. It must have been located at some point near the Mississippi shore because the man was taken over to Mississippi.

Q. You say that was mere tradition, you don't know it?

A. No sir, I cannot substantiate it.

MARTIN NUNEZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. Neptune.

Q. In what parish?

A. Parish of Plaquemine.

Q. What is your business?

A. Merchant.

Q. Conducting a store there?

A. Yes sir.

Q. Is that near the Neptune canning factory?

A. About a block from the Neptune canning factory.

Q. Were you ever a resident of the parish of Saint Bernard?

A. Yes sir.

Q. When?

A. In the year 1900.

Q. When did you leave the parish of Saint Bernard?

A. In the year 1900.

Q. And then where did you move to?

A. To the parish of Plaquemine.

Q. In the year 1900, did you hold any official position in connection with the parish of Saint Bernard?

A. Yes sir, oyster commissioner.

Q. When were you appointed oyster commissioner?

A. In 1900.

Q. In that position as oyster commissioner for the parish of Saint Bernard, did you ever go into these waters for the parish of Saint Bernard?

A. I did.

Q. What part?

A. Point Fortuna.

Q. Where is Point Fortuna?

A. Right at the mouth of Bayou Terre Bœuf, about a mile, I am not positive what distance, about a mile anyhow.

Q. Is that the bayou that divides the parish of Saint Bernard from the parish of Plaquemine?

A. Yes sir.

Q. Was that at the point where the bayou enters the sea?

A. Yes sir.

Q. In your position as oyster commissioner for Saint Bernard, did you see any boats fishing there at that time?

A. Yes sir.

Q. From what State were those boats?

A. From the State of Mississippi.

Q. How do you know that to be a fact?

A. Because the boats were marked Biloxi and Biloxi is in the State of Mississippi.

305 Q. Did you board any of the boats?

A. I told some of the boys that they had no right to fish in our waters and to keep away from our waters or else I would have them arrested.

Q. What did they do?

A. They staid there.

Q. What did they say?

A. They didn't say anything to me. They never paid any attention to me at all.

Q. What did you do?

A. I went back to the parish of Saint Bernard and reported to the police jury.

Q. Did you have any talk with these fishermen along the line of the locality as to where they came from?

A. Yes sir.

Q. Where did they come from, from this talk you had?

A. From Biloxi.

Cross-examination.

By Mr. TAYLOR:

Q. You say that you are oyster commissioner?

A. Yes sir.

Q. At this particular time?

A. Yes sir.

Q. And that you warned these people that you supposed came from Mississippi, that they had no right to fish in the waters of Louisiana. Upon what basis of authority did you assume to tell the citizen of one State of this Union he had no right to fish in the waters of another State, how did it come into your head that—

A. I had the law to act upon it.

Q. What kind of a law?

A. Law of the parish.

Q. Law of the parish?

A. Yes sir.

Q. What do you mean by the law of the parish?

A. That is the authority that the police jury gave me.

Q. You assumed then that the police jury of Saint Bernard parish could hinder the citizens of another State from fishing in the waters of Louisiana; is that the idea?

A. That is the authority I had.

Q. That was all you had; that the police jury of Saint Bernard could hinder the citizens of another State from fishing in the waters of Louisiana?

A. Yes sir.

Q. That was the only authority for that you had?

A. Yes sir.

Q. Well, did you have any personal knowledge of the limits; could you have pointed out the natural boundaries where the limits, the claimed limits of Louisiana ended and those of Mississippi began, along through that archipelago?

A. No sir, I could not do that.

Q. You did not have any personal knowledge?

A. No sir.

Q. So then, if you attempted to expel these people that you assumed were trespassing and they had asked you to show them where the limits of your claim were, you could not have told them?

A. I don't suppose that I or anybody else could tell where the lines could be drawn.

Q. You or nobody else could have told them that?

A. I don't know anything about the boundaries.

Q. Governor Estopinal says he couldn't; you say you couldn't; was there anybody that knew better than you and Governor Estopinal where these limits were. If they had asked you we want to keep off, we don't want to trespass, could you have shown them what your claim your limits are?

A. No sir.

Q. You could not; could you tell us of anybody else you think could. Do I understand that you don't know anybody else
306 that could have told?

A. I know that I don't know.

Q. You can't suggest anybody else that knew more about it than you did that we can find out from. We will take your silence as an admission that you can't tell.

By Judge GUION:

Q. You said, did I not understand you to say that the point at which you found these fishing boats was Point Fortuna?

A. Yes sir.

Q. How far is that point, Point Fortuna from Lake Fortuna?

A. I couldn't exactly tell you where is Lake Fortuna.

Q. Who told you that that was Point Fortuna?

A. Our fishermen.

Q. What was his name?

A. Well, there was Ramon Roberto. Do you want any more?

Q. Yes?

A. Louis Roberto, Alphonsa Turano, Jose Roberto.

Q. Those are the parties who were along with you?

A. Yes sir, at that time.

Q. Did they know that country down there ?

A. Yes sir, they were born and raised there.

Q. What was their business ?

A. Fishermen.

Q. Did they go down there often or infrequently ?

A. At the time they were there they were fishing for Mr. Lopez.

Q. Where was Mr. Lopez living at that time ?

A. In Mississippi.

Q. What was he doing ?

A. Canning oysters.

Q. In Mississippi ?

A. Yes sir.

Q. These men were his employees ?

A. No sir, they were my employees. I was then selling the oysters to Mr. Lopez.

Q. You were selling oysters to Mr. Lopez ?

A. Yes sir.

Q. And these men were working for you ?

A. Yes sir.

Q. Fishing oysters ?

A. Yes sir, for Mr. Lopez.

Q. I didn't exactly understand you. Did you tell these men to quit fishing oysters ?

A. No sir ; these were not the parties I told. These parties were fishing at the time for myself. I was selling then the oysters to Mr. Lopez, but there were other schooners there from Mississippi from Biloxi fishing oysters, and carrying the oysters to Biloxi.

Q. At the same point you were ?

A. Yes sir.

Q. And that was what place ?

A. Point Fortuna.

Q. These men that were fishing oysters for you, where do they live ?

[[A. They live in the parish of Saint Bernard.

By Mr. DYMOND :

Q. Is Point Fortuna where Bayou Terre Beuf enters the gulf of Mexico ?

A. Yes sir.

By Judge GUION :

Q. Could you show us on this map that point at which you say you found these Mississippi oystermen gathering oysters ?

A. Yes sir.

Q. Take your time and examine it. Just point out on that map No. 7.

A. Here is Lake Fortuna.

Q. Just mark it there. (Witness marks the place with a pencil, "A.")

307 Mr. TAYLOR: I object, Mr. Commissioner, to the witness being assisted. He has been asked the question, let him answer it in his own way. I object to the witness—

By Judge GUION: Assisted in what way?

Mr. TAYLOR: Assisted even by that suggestion "Mark it." I do not think that is a fair suggestion. I let the witness put it himself.

Objection continued—being assisted by the suggestion being made to him to mark certain points with a pencil.

Judge GUION: Counsel for the State of Louisiana absolutely disclaims any intention to suggest to the witness what his testimony should be and disclaims any desire or purpose to assist him in giving his testimony. That in asking him to mark the place found by him on the map No. 7 then being examined by him, counsel did so for the purpose of enabling the Supreme Court to understand by the mark made by the witness whether or not he was testifying intelligently in reference to the point that he declared in his testimony was that at which he had discovered the fishing smacks from the State of Mississippi.

By Mr. ZACHARIE:

Q. Can you find the point?

By Mr. DYMOND:

Q. Read the question. (Question read.)

By Judge GUION:

Q. Well, what is your answer, Mr. Nunez, can you, or can you not, we don't want to be here all day.

A. I give it up, I can't find it.

Q. What was your reason for marking the letter "A" on this map just now?

A. Because I found Lake Fortuna.

By Mr. DYMOND:

Q. Can you find Bayou Terre Beuf on that map?

A. Yes sir.

Q. What is the name of the point on this map at which Bayou Terre Beuf enters into the gulf of Mexico?

A. What is the name of that bayou?

Q. What is the name given on this map as the point where Bayou Terre Beuf enters into the gulf of Mexico; please look at the map?

A. What is the name of the bayou?

Q. What is the name of the point where Bayou Terre Beuf enters the gulf of Mexico?

A. At Point Fortuna.

Q. Can you point out Bayou Terre Beuf on this map?

A. Yes sir.

Q. Will you please point it out and mark it? (Witness marks it.) How have you marked it, with what letter?

A. With the letter A.

Q. Where does that bayou enter the gulf of Mexico. Can you point out the point on this map where that bayou enters the gulf of Mexico?

A. Right at Point Fortuna.

Q. Can you point out on this map the spot at which that bayou enters the gulf of Mexico?

308 A. You want me to mark it?

Q. That is what I am asking you, whether you can point it out or not?

A. Where that bayou enters the gulf of Mexico?

Q. Yes. I want you to indicate the spot on this map.

A. This is where it empties at Lake Fortuna.

Q. Will you mark that B in place of A?

A. Here it is, B.

Q. What is the name of the point as given on this map at the place you have marked B?

A. Lake Fortuna.

Q. What is the name of the point?

A. Point Fortuna.

Q. As given on this map, what is the name given on this map?

A. Lake Fortuna.

Q. Can you read English?

A. Yes sir, I think I can.

Q. Will you please look at the point designated on the map where you have marked it B and read the letters that compose the word at the end of the point?

A. "A."

Q. Will you please look at the word? Do you understand what a word is?

A. Yes sir.

Q. What is it?

A. A word is a syllable.

Q. Is it an assemblage of letters, a word, of more than one letter?

A. Yes sir.

Q. Do you find anything on this map that looks like a word, at that point?

A. I see L and then a dot between and then La.

Q. What word—

A. I don't know what that L stands for, but the La stands for lake but that L I don't know what it stands there for.

Q. Is that at the point or is that in the lake?

A. That is in the lake.

Q. What is the name at the point?

A. Point Fortuna.

Q. Is that shown there as the name, Point Fortuna, on that map?

A. At the point of it is Point Fortuna but I don't see the point

Q. Don't you see any point sticking out into the gulf of Mexico at the mouth of that bayou; don't you see a point there?

A. No sir.

Q. Do you see any name there?

A. No sir.

By Judge GUION:

Q. All that you know about the particular location where you say you found these boats fishing oysters and carrying them to Mississippi is what you got from these people that went along with you and showed you the place?

A. Yes sir.

Q. And what is the name of the place that you were told by them was the place where you found these men fishing oysters?

A. Yes sir.

Q. I say what was the name of it?

A. Point Fortuna.

Q. How far was that point from Lake Fortuna?

A. I couldn't tell you.

Q. Did you have it shown to you?

A. I don't know the place by the name of Lake Fortuna, I just know that point by the name of Point Fortuna.

Q. How do you know it by that name?

A. By these fishermen telling me so.

Q. Did you go any further at that time?

A. I didn't go any further.

Q. Did you go out there any other time?

A. No sir. We remained around Point Fortuna for several months fishing.

Q. During those several months, did you remain out in that country the whole time?

A. No sir, only for awhile with my fishermen.

309 Q. How long did you remain there?

A. About fifteen days.

Q. While you were there was any fishing of oysters going on?

A. Yes sir.

Q. By whom?

A. By my fishermen and some fishermen from Biloxi.

Q. Did you ever make any other trip besides the one you have just detailed, down there?

A. I made one more trip.

Q. Who went with you at that time?

A. Some of my boys.

Q. What do you mean by your boys, your sons?

A. Our men.

Q. Employees, do you mean?

A. Yes sir, my employees.

Q. Do you know where you went on that occasion?

A. I went there.

Q. Went there; where is there?

A. I went there to see my fishermen while they were fishing there.

Q. To what place?

A. Point Fortuna.

Q. The same place?

A. Yes sir.

Q. Then you did not go anywhere else except to Point Fortuna?

A. No sir, I did not.

Q. During the time that you were acting as oyster commissioner?

A. That is the only place I went to.

Q. On that second trip did you find any boats fishing oysters then?

A. Yes sir.

Q. Whose boats were they?

A. There was another boat but I don't remember the name, but the men who were employed on the boat were some of Martinez' sons from Biloxi.

Q. Gathering what?

A. Gathering oysters.

Q. To take where?

A. To Mississippi.

Q. How do you know that?

A. Because the boat was marked Biloxi.

Q. Did you know these men that were working on the boat?

A. Yes sir, I know two of them; the captain I didn't know who he was, he was a man from Mississippi.

Q. Did you know where they lived?

A. Yes sir.

Q. Where?

A. In Biloxi.

Q. That was what time, when?

A. In 1900.

Q. About what month?

A. About February.

Q. How long after your first trip out there?

A. Well, that is the only other trip I made, that was the second trip, that is all.

Q. I say how long after your first trip—you made two trips down there?

A. Yes sir.

Q. I say how long after your first trip was the second trip?

A. It was about ten days between.

Q. What did you say or do if anything at that time concerning the fishing of oysters by Mississippians?

A. I told them that they had no right to fish in our waters, to please go away from there or else I would arrest them.

Q. Did they do so?

A. No sir.

Q. What did you do when you got back to Saint Bernard?

A. I went right to the police jury and notified the police jury about it.

Q. What were you instructed to do?

A. Well, there was nothing done; as they were going to take some action on it there was nothing done.

310 Recross-examination.

By Mr. TAYLOR:

Q. Now, you say that when you were oyster commissioner you had your employees fishing there for oysters at Point Fortuna and you were taking the oysters and selling them to Lopez?

A. Yes sir.

Q. You did not warn off the men that you had there taking oysters and selling them in Mississippi?

A. No sir.

Q. But you did stop other people that were not working for you?

A. No sir.

Q. You warned them off?

A. Yes sir.

Q. You told other people they had no business there, no right there?

A. I warned other people from Mississippi, I told them they had no right there.

Q. That is, people who were not working for you. They were not working for you?

A. No sir.

Q. But the people who were working for you and taking the oysters to Mississippi you did not say anything to them about stopping fishing oysters?

A. No sir.

Gov. W. W. HEARD, witness sworn and examined on behalf of the State of Louisiana testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. You are governor of the State of Louisiana?

A. Yes sir.

Q. When were you elected governor?

A. In April, 1900.

Q. You were then the chief executive of this State during the session of the legislature that began in May 1900?

A. Yes sir, I was inaugurated about the middle of May 1900.

Q. Are you aware of the passage by the legislature of 1900 of a

joint resolution known and published as act 159 of 1900 on the subject of the State's oyster industry?

A. Yes sir; I don't remember it by its number, its title, but I remember the oyster act.

Q. That was to provide for a—was that to provide for an investigation commission?

A. Which one do you refer to?

Q. I refer to the one — 1900 and not the oyster law of 1902?

A. I would like to see it. What is the title of the act?

Q. It is a joint resolution by the house and senate.

A. What is your question?

Q. I asked you if you were aware of the passage of that act?

A. Yes sir.

Q. Do you know whether the speaker of the house and the lieutenant governor appointed the commission from the respective houses set forth in that joint resolution?

A. I think the journal so states.

Q. Did you attend a conference held in the city of New Orleans on January 19th 1901?

A. Yes sir.

Q. Were the members of that original legislative commission present at that meeting, so far as you recollect?

A. I think they were—let me see, Mr. Cage, Mr. Estopinal, Mr. Lewis, and Mr. Dymond, that is the commission.

Q. You are referring to the boundary commission?

A. I am referring now to the commission appointed.

Q. Was Mr. Hugh Cage there?

A. I think so, yes.

Q. Was Mr. A. W. Bonvelan representative from Houma there?

311 A. I cannot remember every gentleman; I believe that all the commission was there.

Q. Was Mr. Simon Leopold there, so far as you recollect?

A. I think so; the proceedings ought to show definitely who was present.

Q. Were there minutes made to those proceedings?

A. Yes, sir, and copies forwarded to Governor Longino.

Q. Who was he?

A. He was at that time governor of Mississippi.

Q. Do you remember what action was taken by that meeting in the shape of any resolution?

A. That meeting adopted some resolutions and forwarded them to me and it was—

Q. Were you requested to take any action as a result of that meeting?

A. The resolution ought to show, Mr. Dymond.

Q. Well, did you take any action, Governor, as a result of that meeting?

A. Yes, sir.

Q. What did you do?

A. My letter book will show. I think it was in the latter part of January I addressed a communication to Governor Longino informing him of this meeting; that I had appointed a commission on the boundary question and requested that he appoint a similar commission from his State.

Q. What was your purpose, Governor, in appointing this commission on the part of the State of Louisiana and in requesting Governor Longino to appoint a similar commission on the part of the State of Mississippi?

A. To see if there could not be an amicable adjustment of this boundary question between the two States.

Q. Did you understand that there was a dispute as to the boundary at that time?

A. Oh, yes.

Q. Did you understand that there were Mississippians fishing in what Louisiana contended were Louisiana waters?

A. I was so informed.

Q. Have you ever had occasion to visit in the neighborhood of the locality in question, or make a trip down there?

A. I was on a fishing trip, I think in 1901 or 1902.

Q. To what point did you go?

A. I was out on the sound, on the keys, around Ship island, Cat island, Chandeleur islands, Isle au Pitre, around in that neighborhood.

Q. Did you go through the channel separating Isle au Pitre and Cat island?

A. This controversy was up at time and I remember distinctly asking the owner of the schooner which we were in, Mr. McDonald, did he know where this disputed boundary line was, or, in other words, could he point out what he understood to be the boundary line, and he pointed out to me at a point between Cat island and Isle au Pitre, as the channel, and that, as he understood, was the line.

Q. Were you then close enough to see Isle au Pitre?

A. I was right there, yes sir, we were in the channel. I remember we got caught there in a calm one night——

By Mr. TAYLOR:

Q. Did you say that trip was in 1901 or 1902?

A. I think it was in 1901, I am not positive about the time, I generally go over——

Q. It was not earlier than 1901?

A. No, sir, I think not.

By Mr. DYMOND:

Q. Who was this Mr. McDonald you talked with?

A. He is a resident of Pass Christian, Hancock county, Mississippi, and was the owner of this schooner that we had rented from

him, and I believe that he is the present mayor of that town or was a short while ago.

312 Q. As the chief executive of the State of Louisiana, what prompted you to take this action and what interest did the State have in getting this matter settled?

A. I felt it my duty to see that our laws were obeyed and it was my desire to have this question adjusted on amicable lines, and it failing—these two commissions failing to get such result, why, I thought the court was the proper place.

By Judge GUION:

Q. What laws do you refer to, that you desired to see obeyed?

A. The oyster laws.

By Mr. DYMOND:

Q. Governor, will you please look at this document marked Exhibit A, being a certified copy of an original document filed in the Supreme Court at Washington, in this suit, and state if you recognize it to be the minutes of the meeting held in New Orleans January 19th, 1901?

A. Yes sir.

Q. Will you please look at the document marked Exhibit B, being a copy of the original document filed in the Supreme Court at Washington, in this suit, and state if you recognize it to be a copy of your letter addressed to Governor Longino of Mississippi about which you have just testified?

(Witness refers to his letter book.)

A. Yes, sir, and I may say in that connection, that it is identical with my letter press copy which I now have before me.

Q. Will you please look at this document marked Exhibit C, being a certified copy of the original document on file in the Supreme Court at Washington in this cause and state whether you recognize it to be a copy of the letter received by you from Governor Longino of Mississippi in reply to your letter of January 26th?

A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now offer the original Exhibits A, B, and C filed in the Supreme Court at Washington in this cause and tender to counsel for the State of Mississippi certified copies of the originals on file in this suit in Washington in connection with the bill of complaint.

Q. Governor Heard, did you keep in touch with the results of the conference of these two commissions?

A. You mean the first commission?

Q. Yes. I mean the boundary commission that you appointed?

A. Yes sir.

Q. Did anything develop of a character tending to an amicable settlement of this dispute without suit?

A. No sir. The two commissions failed to agree and suggested that a—that is my recollection, I think I read the proceedings—suggested a friendly suit.

Q. Did you authorize the attorney general of this State to institute the necessary proceedings in the Supreme Court of the United States to determine this boundary dispute?

A. Yes sir.

Q. Governor, in connection with this boundary dispute did the State have any financial interest involved and if so has it now?

A. Yes sir, it is a question of revenue to the State.

Q. Does the State derive a revenue from the oysters gathered from its waters?

A. Yes sir, certainly.

By Judge GUION:

Q. In addition to the value that you have just spoken of
313 that the water area may have by reason of the revenue that the State might derive from the oyster industry carried on and operated under her laws, could you be able to state whether or not there is any value attached to the marsh lands around the water area in the disputed territory; does the State fix any value—

A. The State has fixed a value on all of its lands, depending on the character of the land if sea marsh land it has fixed one value, if swamp land another value, if high land another value.

Q. What is sea marsh land put on the market, at what price, since 1902, per acre?

A. 25 cents per acre.

Q. Formerly what was it?

A. Ten cents, until 1902.

Q. Do you know how many acres of land there are, about, in that country down there, belonging to the State?

A. No sir.

Q. You spoke just now, that as chief executive of the State you felt obligated somewhat to have this suit brought by the State in order to settle the boundary line between Louisiana and Mississippi because of the fact that you, as the chief executive, were bound to uphold the laws of the State—

A. To see that the laws were executed.

Q. And you in one of your answers a moment ago, you spoke of oyster laws; do you mean the oyster laws that give a revenue to the State of Louisiana?

A. Yes sir; that I was informed they were being violated by non residents and we were losing a revenue because of that infringement of our law.

Q. Were you informed where these non residents lived, in what State?

A. I was told they were Mississippians.

By Mr. DYMOND:

Q. Was that what prompted you to address your communication to Governor Longino as the governor of Mississippi?

A. Not altogether. I wanted this question adjusted. I wanted the citizens of the two States to avoid any trouble if it was possible and to know the rights of the two respective States.

Q. You did not address any communication to the governor of Alabama?

A. No sir.

By Judge GUION:

Q. Had you any reason to believe, Governor, that the infringement of the laws of this State in the protection of the oyster industry against citizens of other States, might lead to violence or blood shed or conflict of any kind?

A. Yes sir, I was informed that the Mississippians, or some of them, that were fishing oysters there, disputed our claim, or rather disputed the boundary, and it was likely to bring about friction and of course I desired that that be avoided if possible. At the same time I felt we had to maintain what we believed to be our rights, and I conceded to our friends the Mississippians, the same privilege.

Q. Did the State take any action through any instrumentality of the State government looking to the protection of that oyster territory, further than protest?

A. I think not.

Q. Has the oyster commission ever done anything?

A. In what respect?

Q. Has there ever been any patrolling of the oyster territory?

A. Yes sir. I did not understand your question. The legislature of 1902 created an oyster commission and that commission has, I understand, patrolled a certain line agreed upon by the two commissions of the two States with a view of keeping non residents out of certain waters.

Q. What do you mean, Governor, by agreement between the two States?

A. I mean the two commissions failed to agree on a boundary and specified certain lines to be observed by the two States and certain territory to be regarded as neutral.

Q. Until when?

A. Until this thing could be finally adjusted.

Q. Until a settlement and decision by the Supreme Court of the United States?

A. Yes sir.

Q. Do I understand you to say that that was done by the two commissions appointed by Governor Longino and yourself, or by the two oyster commissions of the two States?

A. This agreement as to these lines, as I understand, was by the

two oyster commissions; but, the prior commissions failed to agree and suggested a friendly suit to determine the question.

Q. Then do I understand that the commission appointed by you, consisting, I believe, of five persons, did it not?

A. I believe so.

Q. And the commission likewise appointed by Governor Longino, after having failed to agree on an amicable adjustment of the boundary dispute between them, and having suggested this amicable suit, nothing was done except an agreement about a neutral territory. Was there anything done at that time?

A. I don't remember what the two oyster commissions did, further than to enter into this agreement and to carry it out.

Q. Then that was the oyster commissions then?

A. Yes sir.

Q. That entered into this agreement about a neutral zone?

A. Yes sir, of course.

Q. When was that, Governor, do you remember?

A. That must have been in the fall of 1902.

Q. Was it after, or before, the failure of the two commissions appointed by yourself and Governor Longino to agree on a boundary?

A. It was afterwards. The boundary commission, if I may designate it as such, was appointed in 1901 and the oyster commission was appointed in 1902.

Q. Then after the commissions that you and Governor Longino appointed with reference to the boundary, had failed to agree, the legislature of 1902, I understand, created the oyster commission?

A. Yes sir.

Q. And the two commissions of Mississippi and Louisiana met, did they?

A. Met, yes sir, and entered into this agreement with reference to certain lines.

Q. Do you know what that agreement was?

A. Only in a general way.

Q. Will you please examine that document which, for the purpose of identification, is now marked Document No. 4 and state whether you are able to testify, or not, that this is a correct transcript or correct minute of what transpired, between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi concerning which you have just been giving evidence?

A. This appears to be a copy of the proceedings that the commission forwarded to me after the two commissions had entered into this agreement.

Mr. DYMOND: In connection with the testimony of Gov. Heard, the State of Louisiana now offers a certified copy of the resolution adopted by the joint conference of the Louisiana and Mississippi oyster commissions on September 9th, 1902.

Q. Have you any personal knowledge of any subsequent meeting

between the two oyster commissions of Mississippi and Louisiana concerning the matter that is provided for in this agreement?

A. Yes sir. Sometime in the latter part of 1902, Governor Longino addressed me a communication requesting a joint meeting of the two commissions for the purpose, as he claimed, of modifying the agreement which had heretofore been entered into.

Q. You mean the two oyster commissions?

A. Yes sir, I mean the oyster commissions. I acknowledged receipt of that request as shown by my letter book, on November 21st, 1902, reading as follows:

"NOVEMBER 21ST, 1902.

His excellency Gov. A. H. Longino, Jackson, Miss.

MY DEAR GOVERNOR: I beg to acknowledge the receipt of your communication of the 19th inst. referring to the differences as to the limits between Mississippi and Louisiana affecting the oyster industry of the two States and I have carefully noted its contents. I herewith enclose copies of the agreements which were entered into between the oyster commissions of the two States at a joint conference held in New Orleans on September 9th 1902 and of the ratification thereof by the board of oyster commissioners of Mississippi at a meeting held by them at Gulf Port on September 12th 1902. I have also enclosed an extract from a letter on this subject matter of date November 12th 1902 which was addressed to me by Hon. John Dymond Jr. attorney for the Oyster Commission of Louisiana. These enclosures contain information that I would be pleased to have you note. Then if your view as expressed in your communication of the 19th inst. undergo any modification since, you will please so advise me and I will take up the matter with the oyster commission of this State. Thanking you for your greatly appreciated kind wishes concerning my recent spell of ill health, which, I am glad to inform you has well nigh passed off,

With expressions of my highest esteem

I remain very truly yours,

W. W. HEARD, Governor."

Q. Was that letter sent by you, Governor, to Governor A. H. Longino?

A. Yes sir.

Q. Have you any idea where the letter received from Governor Longino, which you answered, now is?

A. My impression is that I sent it to you, that I forwarded the letter to Mr. Dymond.

Mr. Dymond of counsel for the State of Louisiana states that he corroborates the impression of the witness and that he will make a search for the letter and endeavor to produce it at a later date.

Q. Were there any subsequent actions taken by you in connection with this request of Governor Longino?

A. Yes sir.

Q. What was done; did you hear from Governor Longino—

A. After hearing from Mr. Dymond as to the most suitable and convenient date, I wrote Governor Longino on December 5th 1902, as shown by my letter book which is now before me, reading as follows:

"DECEMBER 5TH, 1902.

His excellency Governor A. H. Longino, Jackson, Miss.

MY DEAR GOVERNOR: I have the honor to acknowledge receipt of your letter of the 25th ult. requesting a joint conference of the oyster commissions of Louisiana and Mississippi with a view of arriving at a more satisfactory adjustment of the contention over the oyster fisheries in the disputed coast territory. Immediately upon receipt of your communication I addressed a communication to Hon. John Dymond Jr. attorney for the oyster commission of this State to ascertain the date of the regular meeting of our commission and such suggestions as he might desire to make relative to a joint conference. He has just informed me that our commission meets on the third Wednesday in each month and it would, therefore, meet in regular session in New Orleans on the 17th of the present month, consequently I would suggest that the contemplated joint conference be held in the city of New Orleans on Wednesday the 17th inst. at 12 o'clock, at No. 339 Carondelet street. If this date is agreeable please notify me, also your own commission and I will likewise notify our own. With best regards I remain very truly yours,

W. W. HEARD, Governor."

In reply to the letter just read, Governor Longino wrote to me suggesting the 16th inst. instead of the 17th of December as he had an engagement for the 17th.

MR. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offers in evidence, the original letter of Governor Longino under date of December 8th, 1902, for identification, marked Document No. 5, copies of which are to be furnished to counsel for the State of Mississippi.

Q. Proceed Governor?

A. This joint meeting was held in this city on the day indicated in Governor Longino's letter. My recollection is that the oyster commissions of both States were present and the attorney general, Mr. McClurg, of Mississippi, and Governor Longino, Attorney General Guion, Mr. Dymond and myself together with a number of citizens were in session for several hours and the question of agreement heretofore made was discussed thoroughly.

By Judge GUION :

Q. When you speak of agreement, do you mean the agreement——

A. Fixing certain——

Mr. DYMOND : Of September 9th 1902 ?

A. Yes sir ; I mean the agreement dated September 9th 1902 and marked Document Number 4

By Mr. DYMOND :

Q. What was the result ?

—, —, —.

By Judge GUION :

Q. We would like you to state exactly—first, what was done, before we reach the result, what was suggested by either one side or the other and what was accomplished ?

A. The proceedings of the joint conference ought to show what was done, but my recollection is that nothing was accomplished. That the two commissions, after hearing the discussion from both sides, maintained the agreement of September 9th 1902.

Q. What was asked at that meeting and by whom ?

A. Governor Longino wanted the agreement so modified, as I recollect it, that certain Mississippians could fish in waters prohibited by the lines indicated in this agreement.

Q. Was anything said at that meeting by way of argument in favor of that proposition by any one ?

A. By Governor Longino and the attorney general.

Q. Of what State ?

A. Of Mississippi, and I think at that same meeting there was a protest made by Mr. Gilmore who claimed to be the owner of Isle à Pitre, protesting against his land, situated on that little island, being included in this neutral territory.

Q. Verbal protest ?

A. Yes sir, because, as he claimed, he had patents from the State which had been approved by the Land Department at Washington.

Q. Was that made at that meeting in open session ?

A. Yes sir.

Q. By what Mr. Gilmore ?

A. I don't know his initials ; it is the attorney here.

Q. Do you mean Mr. Samuel Gilmore ?

A. No sir.

Q. His brother ?

317 A. Yes sir, what is his name ?

Q. Do you remember what Governor Longino desired that the two oyster commissions would consent to ; was there any modification of the agreement of the 9th of September 1902, asked ?

A. Governor Longino desired a modification, but, as I have stated, the two commissions, as I understand it, declined to make any modification.

Q. What was the modification that Governor Longino desired?

A. I do not remember the specific change. We had a map before us and he indicated on that map where he claimed that they had a right to fish oysters and we, or rather Mr. Dymond, I believe it was differed with him as to his rights as shown by that map.

Q. Do you remember whether the modification of the agreement of the 9th of September 1902, which Governor Longino desired, was in the direction of restricting the limits or enlarging the limits within which the Mississippi people might fish oysters?

A. As I understood it, he wanted to enlarge the limits and permit the Mississippians to fish in the waters that were prohibited by this agreement.

Q. Do you remember whether those waters were in the open water area, or whether they were below the coast line that Louisiana claims to be her coast in the parish of Saint Bernard?

A. I don't remember that distinctly, Judge. I remember it being urged by some one that the reason the two commissions had agreed upon this particular line was that it was easier patrolled than if they were to yield to the contention of Governor Longino. That their two points of line came near together and they could patrol that coast with much more ease than if they granted the contention which he was demanding.

Q. That meeting, as I understand, was a meeting prior to the meeting of the two commissions at which Governor Longino made that suggestion of modification?

A. How is that? I don't understand you.

Q. Read the question. (Question read.) In other words, what I want to know is this, Was there a meeting at which the two commissions were present, yourself and Governor Longino, prior to the meeting of the two oyster commissions on the subject of the acceptance or rejection of this proposition?

A. It was a joint conference, both commissions being present, and it was discussed in open session afterwards.

Q. What became of that conference?

A. I think, on the same day, afterwards, the visitors if I may so use the term, withdrew and the two commissions took up the question and passed upon it. That is my recollection of it.

By Mr. ZACHARIE:

Q. In regard to Mr. Gilmore's protest, did Mr. Gilmore claim that he owned this Isle au Pitre by an entry from the United States Government or from the State land office of Louisiana?

A. He claimed to own it by purchase.

Q. From whom?

Mr. TAYLOR: I desire to note an exception to that question as asking for a statement by the Governor in reference to the contents of documents which can be proved by documentary evidence, as to the nature of a man's title.

A. Mr. Gilmore, as I recollect it, protested of Isle au Pitre being included in the neutral territory, upon the ground that he was the owner by purchase of these lands, and that they had been purchased from the State of Louisiana and had been approved to the State as swamp lands by the Land Department at Washington under the swamp land grants of 1849 and 1850. That is what I said before, or intended to say.

By Mr. DYMOND :

318 Q. When you were advised by Governor Longino of Mississippi, of the original appointment by him of his amicable boundary commission, did you reply to that communication of Governor Longino ?

A. Yes sir.

Q. Will you please state whether you made a letter press copy of your reply ?

A. I did, and it reads as follows :

" FEBRUARY 12TH, 1901.

His excellency Governor A. H. Longino, Jackson, Miss.

DEAR GOVERNOR: I have the honor to acknowledge receipt of your communication of the 9th inst. advising me that you had appointed five commissioners from your State to confer with the commissioners from this State to determine the oyster boundary lines between Mississippi and Louisiana. I shall transmit to day, to the Louisiana commissioners, the names of those whom you are pleased to appoint. I would be further obliged to you if you would be so kind as to direct your secretary to return to this office the copy of the proceedings of the conference held at New Orleans on the 19th ult. which were enclosed with my last communication to you.

Very truly yours,

W. W. HEARD, Governor."

Cross-examination.

By Mr. TAYLOR :

Q. I understand you to say that in discharging your duty as chief executive of Louisiana in enforcing the oyster laws, that your purpose was to protect this territory from the intrusion of non residents of the State of Louisiana. It was not against the citizens of any one particular State, was it, more than another ?

A. My information was this intrusion, if you wish to use that term, was only by the people from Mississippi.

Q. Didn't you hear the testimony this morning of one of your witnesses who said there were as many as 300 boats, a fleet, at one time, composed of people from Alabama and Mississippi ?

A. That was Governor Estopinal's testimony. That was some two or three years previous to the time I am now speaking of; I think he referred to 1898.

Q. Don't you know the fact, that that was not confined to the citi-

zens of Mississippi, that citizens of Alabama as Governor Estopinal testified, that they were among those who had boats there fishing in these disputed waters?

A. No sir, I do not know that. As I have just stated my information was—

Q. That Mississippians were there—

A. That it was Mississippians that were infringing upon our oyster laws.

Q. When you were enforcing the laws of Louisiana would you have exempted people coming from Alabama fishing in those waters and enforced the laws against the State of Mississippi?

A. No sir.

Q. It was not your purpose to make any discrimination?

A. No sir.

Q. Against the citizens of one State in favor of another?

A. I never heard of Alabama or any other citizens claiming the right to fish there because that territory belonged to their State, and it was only the Mississippians who claimed they had a right to be there. They claimed the territory and hence the procedure could be only against Mississippi.

Q. The procedure then would not have permitted Alabamians to go and fish there while at the same time prohibiting Mississippians from fishing there?

A. No sir, all non residents, all were to be excluded.

Q. It was against all non residents?

A. Necessarily so.

319 Q. Now, Governor, try and refresh your memory on this point. It was in the summer, I understand, of 1901, that there was a failure to make any amicable agreement; was it not the subsequent summer of 1902 that you took this trip to which you refer. See if you can refresh your memory; was it not after you had failed—

A. I have been going over there every summer and I am not able to say—

Q. Whether it was the summer—

A. Whether it was the summer of 1901 or 1902. I generally—

Q. But it was certainly in the summer. Was it as late as July whatever year it was?

A. I think it was the last two weeks of July.

Q. Of one year or the other?

A. Yes sir. I do not like to stay over there in August on account of the gales.

Q. Was Robinson the name of the captain of the schooner of whom you made inquiry as—

A. McDonald.

Q. The fact that you inquired of him showed that you had no personal knowledge yourself?

A. Yes sir. It was a question that was being discussed.

Q. You were inquiring for information—

A. Merely for information.

A. And you had no knowledge personally——

A. No sir.

Q. — of what these limits and boundaries were?

A. And he pointed out to me what he claimed, what his understanding was of the lines, and the reason of that, we were there quite a while, we were overtaken by a calm and night had also overtaken us and we did not want to anchor at that particular point and he rowed the schooner across the channel.

Q. You have no personal knowledge of what he told you was true or untrue, sound or unsound?

A. No sir.

SIDNEY F. LEWIS, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. You are a resident of the city of New Orleans?

A. Yes sir, I was born in the city of New Orleans.

Q. How long have you lived here?

A. Fifty years.

Q. What is your occupation?

A. I am a civil engineer. I graduated at the University of Virginia in the degree of civil engineering in 1875.

Q. What is your present employment?

A. I am a member of the board of State engineers since April 15th 1880.

Q. Are you the Sidney F. Lewis who was appointed by Governor W. W. Heard a member of the amicable boundary commission to confer with a similar commission to be appointed from Mississippi?

A. Yes sir, I am.

Q. Did you attend the conference that occurred in the city of New Orleans on March 26th 1901?

A. I did.

Q. Will you please look at this document marked Exhibit D, the original of which is annexed to the bill of complaint now on file in the United States Supreme Court, at Washington, D. C., in this suit, and state whether you recognize it to be the minutes of the meeting of the joint boundary commissions?

A. Yes sir, I do.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, offer and produce for the purpose of filing in evidence, the original of said minutes now on file in this suit in Washington D. C. marked Exhibit "D," a copy of which has been tendered counsel for the State of Mississippi.

Q. Col. Lewis, in connection with the motion made by Mr. Bowers of Mississippi set forth in said minutes, was there any map prepared by the Louisiana commission setting forth their contention as to boundary?

A. Yes sir.

Q. Who had charge of the making of that map?

A. I presume I did and the members, myself and the members of the Louisiana commission.

Q. Who had the actual *confession* of the map itself in hand?

A. I did.

Q. Did you make up the map; did you make the map requested?

A. I made it with the assistance of the draftsman of the board of State engineers.

Q. What basis did you use for this map?

A. The basis? You mean what maps I used?

Q. Yes.

A. I used the Coast Survey charts of the Louisiana and Mississippi coast.

Q. What Coast Survey charts; do you know them by number?

A. No, I don't know them by number.

Q. Well, by what department, of what Government were those Coast Survey charts made?

A. By the United States Government.

Q. Will you please state what charts, by number, were used, in making up this map?

A. Coast chart 191, coast chart No. 190, coast chart No. 189, scale 1 to 80,000, that is the same scale for all the charts.

Q. Will you please look at the document which is before you and which is marked Exhibit E and purports to be a certified copy of the original Exhibit E filed in this suit and now in the custody of the clerk of the Supreme Court of the United States in Washington, D. C., and state whether you recognize it to be a true and correct copy of the original map as prepared by yourself?

A. Yes sir, I do.

Q. How did the Louisiana commission come to the conclusion that that was the line that it should claim as being the proper boundary between the two States?

A. Well, my interpretation of the Louisiana purchase in 1803 which went on to describe the boundary of Louisiana, when it got to this part of it—have you got the language of that purchase?—I mean to say it stated to the gulf of Mexico.

Q. Do you refer to the act creating the State of Louisiana?

A. No; I am speaking of the Louisiana purchase in 1803; that is prior to the act creating the State of Louisiana. It went on to say—have you got it here? You ought to have it? The Louisiana purchase? It went on to say that the eastern boundary of Louisiana followed the Mississippi river into the River Iberville—I don't know the exact wording, probably I can get it and show what I mean. Well, as far as I can recollect it went on to say that the eastern line,

that is, the Louisiana purchase, came down the Mississippi river then went into the River Iberville, and then in Lake Maurepas and down through Lake Pontchartrain out into the gulf of Mexico.

Q. Through what, leading from Lake Pontchartrain?

A. It didn't say through what; it said to the gulf of Mexico. Now, my interpretation, to the gulf of Mexico, is by the deep water channel, and my reason for that is this: the gulf of Mexico does not mean Lake Borgne—

Mr. TAYLOR: Well, Mr. Commissioner, I must note here an objection now to the Major putting down an interpretation of the terms of the treaty of 1803 as that is a question of pure law.

321 A. —to the gulf of Mexico means by the deep water channel.

Q. Does the line on this map Exhibit E follow the deep water channel?

A. Yes sir.

Q. Do you refer to the line in red ink?

A. Yes sir, here it is, this is the end of it right here, it is here on the map, it is written here boundary line of Louisiana, purchase 1803, and then here it is also repeated, "boundary line of Louisiana purchase 1803" east of the Chandeleur islands.

Q. Did you also set forth the line bounding the State of Mississippi as it enters the gulf of Mexico at its eastern extremity?

A. Yes sir, six leagues from the general coast line.

Q. Is that indicated on the map and named as the southern boundary line of the State of Mississippi?

A. It is the southern boundary line of the State of Mississippi.

Q. Does it take up and join the Louisiana line just north of Chandeleur islands?

A. It does right at this junction, right here.

Q. Slightly northwest?

A. Yes sir, slightly northwest of Chandeleur islands.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana offer the original Exhibit E now in the custody of the clerk of the Supreme Court of the United States having been filed in this case and tenders to counsel for the State of Mississippi a certified copy thereof, the original of which is described in the bill of complaint as Exhibit E.

Q. Now, what was done with this map, after it was made up by you?

A. It was presented to the board of commissions, that is, to the two bodies of commission, that is, Mississippi and Louisiana commissions and it was discussed.

By Judge GUION:

Q. For what purpose was it submitted?

A. That was the contention of the Louisiana commission and sub-

mitted as their contention. The Mississippi commission had no contention, they had no maps at that time.

Q. That contention was for the purpose of bringing about what?

A. Bringing about a discussion on the merits of the case.

Q. Ultimately, for any purpose at all?

A. Well, I don't quite understand.

Q. What had the two commissions in view, or what had the Louisiana commission in view in meeting the Mississippi commission?

A. To decide upon a boundary line which would be satisfactory to both parties, I presume.

Q. Did this map play any part, so far as the Louisiana commission was concerned in that contention?

A. It did, it was their contention. It is signed by the parties, members of the boundary commission, it says so on its legend there.

By Mr. DYMOND:

Q. The resolution at that joint conference proposed by Mr. E. J. Bowers, as shown by Exhibit D, provided that the Louisiana Boundary Commission was requested to express their ideas as to the boundary line of the area which had been the subject of discussion the line to be delineated in red ink which map should be presented to the Mississippi commission subsequently and that they in turn should endorse their views thereon. Was this map as prepared by you and approved by the commission of Louisiana presented to the Mississippi commission for the purpose of having the Mississippi commission endorse its views thereon?

A. Yes sir, it was.

Q. Do you remember what, or do you know what the result of the consideration of the matter by the Mississippi commission was?

322 A. We had two meetings, if I remember,—let me find out.

I only can say here what is in the proceedings of the meeting. It is expressed here "This view of the matter having been presented a general discussion followed during which the members of the Mississippi Boundary Commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time." Now, what occurred subsequently to that I don't know. I don't believe they have had any meeting since then.

Q. Was there any meeting at which the report of the Mississippi commission was submitted, so far as you know, the reply of the Mississippi commission?

A. Of both commissions?

Q. No sir; I am speaking of the Louisiana commission?

A. I am not positive, I believe there was but I don't remember.

Q. Do you remember the Mississippi report was submitted at that meeting?

A. Have you got the proceedings of that meeting here. I can't

say positively whether there was or not unless I can read the proceedings.

Q. Do you remember whether you ever saw the Mississippi commission's report?

A. No sir, I do not.

Q. Do you know whether it made a report or not?

A. I don't know that.

Q. Will you please look at this document marked Exhibit "F" being a certified copy of the original Exhibit F made part of the bill of complaint in this suit?

A. I don't remember that the Louisiana commission were ever called together, they may have been called together, but I don't remember of being present when this letter was received. All I do remember is, there was a conversation between Mr. Dymond and myself and he said they had rejected that. Between these documents there is considerable lapse of time, one was in February 8th 1901 and the other was July 20 1901.

Q. What do you refer to as February 8th?

A. That was—wait, excuse me, what date is the minutes of the meeting?

Q. March 26th 1901.

A. March 26 1901 instead of February 8th, and this answer to this contention by the Mississippi Boundary Commission is dated July 20th 1901.

Q. Mr. Lewis, are you at all familiar with the locality in dispute?

A. In a general way I am.

Q. Have you ever been there?

A. I have been on a cruise only part of the way. I have not been—I have been all through this part.

Q. What part do you refer to?

A. I have been from the Rigolets to Isle au Pitre and all around Chandeleur islands and Cat island—

Q. Did you ever go—

A. Down to the mouths of the Mississippi river through South pass.

Q. Did you ever go from Petite pass at the head of Malherieux point as far east as Isle au Pitre?

A. I have never been near, skirting the coast; I have been out sailing, out as far as Isle au Pitre, at Cat island, Pass Marian whatever it is called.

Q. Have you ever been down in the marshes?

A. No; not down in the marshes. I have been at Breton island—yes, I will take that back, I went around Cubic's gap, I brought a schooner around, that was a very short cut around, around Cubic's gap to the Mississippi river through the Louisiana marshes, that is way down near the head of the passes, that was in 1878.

Q. What line did you follow when you drew the line from the mouth of Pearl river to the point between Isle au Pitre at its eastern end and Cat island at its western end?

A. The line of the channel.

Q. Is that the channel line?

A. Yes sir, on the chart.

Q. How is that shown on the chart?

A. It is shown here by a red dotted line.

Q. How would you know that was the channel prior to
323 projecting the red dotted line thereon?

A. By the depths of water there indicated on the chart ;
these are charts for navigation purposes and the channel was more
or less bouyed.

Q. Do they show the depth of water?

A. Yes sir.

Q. Is there any indication on the chart of the position of the
buoys?

A. There may be, yes, here it is, the legend of the chart explains
all that, red buoy to be left in entering on starboard hand, black
buoy to be left in entering on port hand, the legend shows that. I
can't see very well, I suppose you will have to take a glass to look
through to see where the buoys are.

Q. Did you pick out the buoys when you drew the line?

A. Yes sir.

Q. Is that the deepest channel between those two points?

A. Yes sir.

Q. Have you ever passed along there and noticed the buoys as
you sailed along?

A. I have, yes sir.

Q. What sort of buoys are they?

A. They were anchored, torpedo shaped buoys, that is what they
are, red and black, some places black and other places red.

Q. Were they channel buoys?

A. Yes sir.

By Judge GUION :

Q. Placed there by whom?

A. By the United States Government.

Q. Is the line along which you saw those buoys the line that is
designated on this map?

A. Practically it is, yes sir.

Q. What line do you refer to, what color?

A. The dotted red line on this map.

Q. Then, do I understand you to say that this map, Exhibit E, a
copy of which is before you now, was tendered to this joint com-
mission of gentlemen appointed by Louisiana and Mississippi at the
time that you had a conference in respect to the establishing of a
boundary line if possible between the two States?

A. Yes sir.

Q. Whose contention does this map Exhibit E, represent?

A. It represents the contention of the Louisiana commission,

boundary commission, signed by every member of that commission.

Q. Do you remember whether anything was said or done by the Mississippi commission at the time it was presented to them?

A. Simply what I said awhile ago, that Mr. Bowers said it was a novel idea. He had not considered it in that way. I believe it is all here in the minutes. I can't remember.

Q. Then I understand you, you had no further conference—

A. I don't remember of any further conference about it after that. I do remember, as I said before about Mr. Dymond. I asked him how the boundary line was getting along, and he told me he had received this letter I believe, that they did not, the Mississippi people did not agree on that.

Q. Did the Mississippi commission advance any theory at that time as to the boundary line of Mississippi?

A. No sir. They were not prepared, it seemed to me, to offer any theory.

Cross-examination.

By Mr. TAYLOR:

Q. As I understand you, when you took this chart as a basis and projected on it, this red line, indicating the claim of Louisiana, you meant that to be an indication of the boundary line of Louisiana as fixed by the treaty, terms of the treaty of 1803, as you understood it to mean?

A. Well, not only the treaty of 1803 but also subsequent—because if you look at the map you will see that there are two boundary lines here, one under the Louisiana purchase of 1803 which
324 runs from Lake Pontchartrain to the gulf of Mexico, that line there, it continues here and goes east of the Chandeleur islands and then subsequently to it, I don't know what act it was, 1812, this boundary line as far as the State of Louisiana was concerned was changed, this part of it, it went on to say, it went to the 31st parallel and then went east to Pearl river and from Pearl river to the gulf of Mexico, this little portion of it here, until it reaches the original boundary of the Louisiana purchase.

Q. Is there anything in that treaty of 1803 or those subsequent acts to which you refer, anything which expresses the idea that the deep water channel here is the boundary.

A. Yes sir. I think to the gulf of Mexico means through the deep water channel

Q. Are there any such words used in either treaty or acts?

A. No sir. It says to the gulf of Mexico and—

Q. And it was just your conclusion that it meant through a deep water channel?

A. No sir, not exactly, my conclusions were from this point of view that I did not consider that any shallow bodies of water Lake Pontchartrain and Mississippi sound, the gulf of Mexico.

Q. That was your construction?

A. Yes sir, from an engineering standpoint.

Q. But no express words, either in the treaty or subsequent act, there were no express terms on which you could base that construction?

A. No sir.

Q. And when that line indicated by you upon that theory was submitted as I understand, the Mississippi commission, speaking through Mr. Bowers, seemed to think it was a novel theory?

A. Yes sir.

Q. There was no indication on their part of accepting your theory?

A. No sir they merely said that they would have to consider it. It states here in the proceeding, novel.

Q. Didn't they, subsequently, in their report, didn't they make a formal or written declination of any acceptance of your theory?

A. As I stated previously, I only know from talking with Mr. Dymond afterwards.

Q. You don't remember what the contents of that written report were?

A. Except what I read here. But that is a fact. I say that because I don't believe that the members of the Louisiana Boundary Commission were called together again to consider this, I don't remember, it is possible they had a meeting, if they did their proceedings ought to show it, I can't recall that.

ALBERT ESTOPINAL, JR., re-called on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this document marked Exhibit F, being a certified copy of the original Exhibit F on file in this case in the office of the clerk of the Supreme Court of the United States in Washington, D. C. and state whether you recognize it to be a copy of the reply of the Mississippi Boundary Commission?

A. I do recognize it as such.

Q. Was it originally received by you?

A. Yes sir.

Q. After you received that, did you consider that there was any further possibility of an amicable settlement of this matter outside of the court?

A. I did not. The communication itself indicates there could not be, because in it was suggested—it was evident that there could be no amicable settlement of the differences and that the only resort would be to the court.

No cross examination.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer the original Exhibit F, on file in the office of the clerk of the Supreme Court of the United States in Washington, D. C., and tenders to the counsel of the State of Mississippi a certified copy thereof.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence a certified copy of the report of A. H. Longino, governor of Mississippi, to the legislature of Mississippi on the subject of the appointment by him of his amicable boundary commission. The same to be marked Document No. 6 for identification, a copy of which is not required by the State of Mississippi as it is part of their official records.

EDGAR PILIE, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your occupation?

A. I am a surveyor.

Q. Where do you live?

A. In New Orleans.

Q. How long have you been a surveyor?

A. I have been a surveyor since 1867.

Q. How old a man are you?

A. I am 59 years of age.

Q. Have you ever held any official position as a surveyor?

A. I have been deputy city surveyor, that is all.

Q. Have you been practicing your profession since 1867?

A. Yes sir, continuously since 1867.

Q. Are you also a draftsman?

A. Yes sir, that is a part of my profession.

Q. Did you prepare, at the request of the State of Louisiana, a map of the State of Louisiana, a map of the State of Mississippi and a map showing Mississippi and Louisiana combined?

A. Yes sir.

Q. Will you please look at these maps which are for identification to be marked Diagrams No. 1, 3 & 5, and state whether they are the maps so prepared by you?

A. They are.

Q. From what data were those maps prepared?

A. From maps furnished by you, Mr. Dymond, furnished me by you of the State of Louisiana and of the State of Mississippi.

Q. Were those recognized maps of those two States?

A. I don't remember whether there was any approval of those maps but I think they were the regular maps of those States.

Q. Are those maps made according to a definite scale, these maps that you have before you, the diagram—

A. Yes sir at the scale of 36 miles to an inch.

Q. Was that all calculated in accordance with the scale of the other maps which you have before you?

326 A. Yes sir, reduced proportionately.

Q. Have you, in your office, any maps of Louisiana or Mississippi?

A. I think that I have one other map, yes sir, a map of the State of Mississippi.

Q. Have you a copy of a map of Louisiana?

A. I don't think that I have. I think I returned it to you.

Q. What maps were these, do you recall, that you made these drawings from?

A. No I don't remember, I don't recall what maps they were, who by.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence the said diagrams No. 1, 3 and 5, with the understanding that counsel for the State of Mississippi will be given a tracing copy of each of said diagrams.

No cross examination.

Mr. DYMOND: Counsel for the State of Louisiana offer and make note of act 65 of the legislature of the State of Louisiana for the year 1884, authorizing the attorney general of the State of Louisiana to institute such suit on behalf of the State as he may find necessary, a copy of said act to be furnished to the counsel for the State of Mississippi.

WILLIAM BEER, a witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Mr. Beer, do you live in the city of New Orleans?

A. Yes, sir.

Q. How long have you been living here?

A. Since 1891, 13 years.

Q. What is your occupation, profession?

A. Librarian.

Q. What position do you hold as librarian in this community?

A. I am librarian of the Howard Memorial library and of the New Orleans public library.

Q. What are the number of volumes in the Howard Memorial library?

A. About 55,000.

Q. What are the number of volumes in the New Orleans public library?

A. About 60,000.

Q. Did you ever hold any position as librarian prior to your holding these positions?

A. For a short time in Topeka, Kansas.

Q. Did you ever hold any before that?

A. No sir.

Q. Do libraries and do these libraries contain maps?

A. The Howard Memorial library has a very large collection of maps; the collection however, principally in the library is my personal property.

Q. Are those maps of Louisiana?

A. They are principally maps of Louisiana.

Q. Have you, in your capacity as librarian, had occasion to study and look into the question of the existence of maps of Louisiana?

327 A. I have specially devoted many years of study to the collection of maps of Louisiana.

Q. What do you consider your collection to be, a good collection of Louisiana maps?

A. It is probably unequalled.

Q. Anywhere else?

A. In number and quality.

Q. Which is the oldest of these maps that you have in this collection of maps of Louisiana?

A. There it is, the map of 1754.

Q. By whom?

A. It is made by Bellin. The title is *Carte Reduite, des Costes de la Louisiana et de la Floride*. Bellin was one of the most celebrated map makers of that period. This map, I should say, was made for the French government, and is therefore surrounded by conditions of correctness much more than—

Mr. TAYLOR:

Q. You are making statements here and I would like to know whether you know these things of your own knowledge or whether you simply know them historically. Have you any personal knowledge of—

A. I know that the map says, drawn up by order of Duc de Choiseul.

Q. You have no personal knowledge as to those facts?

A. I have no personal knowledge as to what took place in 1754.

Q. All that you know is that there is such a legend on that map?

A. Yes sir, but that has accompanied it since its publication.

By Mr. DYMOND:

Q. Is this map a part of the collection of the Howard Memorial library?

A. Yes sir.

Q. Do I understand you to say that this map which you now have

before you in the original and which is part of the collection of the Howard Memorial library was published—

By Mr. TAYLOR:

Q. This is your personal property, it does not belong to the Howard Memorial library?

A. It is my personal property but it is kept in the Howard Memorial library.

By Mr. DYMOND:

—was published in 1764.

A. 1764.

Q. Does it bear on its face the date of its publication?

A. Yes sir.

Q. Does it bear on its face the legend indicating by whom and under what circumstances it was compiled and published?

A. Yes sir.

Q. Does it indicate under what authority the map was published?

A. It states that it was distinctly published for the use of the French government.

Mr. DYMOND: Counsel for the State of Louisiana now tenders the original map to counsel for the State of Mississippi for inspection, and offer in lieu of the original for numbering only a photographic copy of the original, together with a photographic copy of that portion of the map covering the area in dispute in the instant case, which said maps are for identification to be marked S and S-a.

Mr. TAYLOR: We desire to note an exception that unless the original itself is made a part of the record in this case that no photographic copy can be offered as evidence.

Q. Will you please examine these two photo prints marked S and S-a and state whether they faithfully represent, as photographic prints the original map which now lies before you?

A. I have carefully examined them and find them to be true photographic copies.

Q. What is the next oldest map in this collection that you have here?

A. 1766.

Q. Will you please dictate to the stenographer the legend which appears on that map?

A. The particular part of this map which bears on the case has for legend De Uitloop van de Rivier Mississippi. This is a map made in Holland and is part of a book of which the title is *Hedendaagse Historie of Tegenwoordige Staat Van Amerika* at Amsterdam by Isaac Tirion, 1766.

Q. Is it one of the maps of the collection in the Howard Memorial library of which you have charge?

A. It is.

By Mr. TAYLOR :

Q. This is your personal property?

A. These are all my personal property.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi for inspection the said original map just testified to by the witness.

By Mr. DYMOND :

Q. Will you please look at these photographic prints marked 9 and 9-a and state whether they are faithful and correct photo prints of the map which you have before you and concerning which you have just testified about?

A. I have examined them and find them correct photo prints.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi copies of said photo prints marked 9 and 9-a.

Q. What is the next oldest map in this collection?

A. 1775.

Q. Will you please say when and by whom the map that you now have before you was published?

A. It was published by Thomas Jeffreys, who, in 1775, issued an American atlas of which this is one of the maps. I have the knowledge of the evidence of the writings of the period which quote that man's writings with which I am familiar.

Mr. TAYLOR :

Q. You have no knowledge except what you have derived from writings that are on the map or from books?

A. No sir.

Q. If you make that clear it will save a great deal of trouble.

By Mr. DYMOND :

Q. Will you please state whether this collection of maps has been submitted to you for the purpose of studying and acquainting yourself with the history and identity of these maps?

A. Since the selection of these maps for this purpose I have given perhaps, greater attention to them than previously, but I have been familiar with the history of these maps as part of the history of the maps of Louisiana always.

Q. How have you made yourself familiar with the history of these maps?

329 A. By constant study and adding to the collection and by fortunate travel in all the great collections of the world in which collections I have seen copies of these maps.

Q. Do you consider yourself competent to speak as an expert in regard to the particular maps which have been and are to be presented before you so far as their history etc. is concerned?

A. Most decidedly I do consider myself.

By Mr. TAYLOR :

Q. Who was Thomas Jeffreys?

A. Thomas Jeffreys was the official geographer to the King of England.

By Mr. DYMOND :

Q. Will you please look at these photo prints to be numbered 10 and 10-a and state whether they are true and faithful photo prints of the map which you have before you, concerning which you have now testified?

A. I have examined them and find them to be true copies of the maps. Shall I add, that this examination is not an examination made at this moment, as I have compared these in order to discuss it, at leisure.

By Mr. DYMOND : Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi for inspection the original map concerning which the witness is now testifying and also tenders copies of the photo prints No. 10 and 10-a.

AGREEMENT.—It is agreed that the exception of counsel for the State of Mississippi made as to the first one of these maps offered is repeated to each and every one in turn where these photographic prints are offered.

Q. What is the next oldest map in this collection?

A. A map of the same date, taken from the same atlas of 1775. It is course of the Mississippi river from the Balise to Fort Chartres; taken on an expedition to the Illinois in the latter end of the year 1765, by Lieut. Ross of the 34th regiment, improved from the surveys of that river made by the French. London, printed for Rob't Sayer, No. 53 in Fleet street, published as the act directs 1, June 1775.

Q. You now have that map before you?

A. Yes sir.

Q. Is that one of the maps in the collection of the Howard Memorial library?

A. Yes sir.

Q. Will you please look at these photo prints to be marked 11 and 11-a and state whether they are true and faithful photo prints of the map which you have before you and concerning which you are now testifying?

A. I have examined them and find them to be correct photographic prints of the map.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi for inspection, said original maps and furnishes said counsel with photographic copies of same, marked map- 11 and 11-a.

At this stage of the proceedings the hearing was adjourned by the commissioner until 11 o'clock a. m., April 6th, 1904.

Resumption of Proceedings.

NEW ORLEANS, LA., April 6th, 1904—11 o'clock a. m.

Pursuant to adjournment, proceedings were this day resumed.

330 Present: Frank H. Mortimer, Esq., commissioner.
 Hon. Walter Guion, attorney general of the State of Louisiana.
 Mess. F. C. Zacharie, John Dymond, Jr., and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
 Hon. William Williams, attorney general of the State of Mississippi.
 Hon. Hannis Taylor, associate counsel for the State of Mississippi.

Direct examination — WILLIAM BEER resumed.

By Mr. DYMOND:

Q. Will you please look at this map which is now presented to you and state the date at which that map was published?

A. That was published in the year 1764.

Q. What does that map purport to be?

A. It represents the course of the River Mississippi from the sea to Bayagoulas.

Q. Has it any reference to any other map that we have offered or had you testified about in this case?

A. It is an English copy of the Dutch map made by Isaac Tirion in 1766.

Q. What number have we given that map in your testimony?

A. 9.

Q. What is the history of this particular map, so far as you are aware of?

A. It was first published in a periodical called the London Magazine and was received in England as a true representation of the country shown by the title.

By Mr. TAYLOR:

Q. I wish, as you go along, when narrating historical facts of which you could have no personal knowledge you would give us some basis on which you make those statements and that will save me the trouble of cross examining you on those points.

A. Historians are in the habit of collecting from publications of much more remote dates. The source of the authority in this is that the London Magazine was a magazine of wide circulation at that time and is accepted—

Q. Give us some evidence of that, how you know that the London

Magazine had a wide circulation? Give us some data on which you base your statements?

A. The basis is a study of 12 years of the history of everything connected with Louisiana.

Q. How do you know that this was published in the London Magazine?

A. The fact that this was published in the London Magazine is manifested by the map itself.

Q. You take that as conclusive evidence that it was published in the London Magazine?

A. A copy of the London Magazine can be obtained when you are in Washington from the librarian there. You can obtain it by subpoena.

Q. I don't want to go to that trouble to verify your statements. I have no technical right to interrupt you but I suggest these things in order to save time in cross examining you on these points in reference to things of which you could have no personal knowledge.

331 A. If a historian were collecting maps, for a book, for instance, if yourself were collecting maps you would put at the bottom of the map, from the London Magazine.

Q. How do you know it is from the London Magazine?

A. Because it is printed on the map, from the London Magazine.

Q. If you will indicate it is from the London Magazine because it is printed on the map—

A. I may say I have seen it. I am under oath. I state I have seen this map in a periodical known as the London Magazine. The facts I am giving you I am quoting from the articles before me.

By Mr. DYMOND:

Q. Will you please look at this photo print which is now for the purpose of identification to be marked Map No. 12 and state whether that is a true and faithful photo print of the map concerning which you have just been testifying and which is before you?

A. From a careful examination, both prior to this and at this time I state this is a true photographic copy.

Mr. DYMOND: Counsel for the State of Louisiana thereupon offer to counsel for the State of Mississippi, the original map concerning which the witness has just been testifying, for inspection, and produced for the purpose of numbering the said photo print of said map to be numbered map No. 12 and tendered to counsel for the State of Mississippi a photo print of said original map.

Q. What is the next map in point of age that you have before you?

A. A map of 1830.

Q. By whom was that map made up and at what time and for what purpose and state your means of knowing.

A. The information on the map itself conveys this, that it is a

part of an illustration of a work entitled *Travaux Civils des Etats-Unis*. It is entitled *Carte Generale de la Floride et du Delta du Mississippi*, presentant le trace du Canal projecte de l'Ocean Atlantique on Golfe du Mexique a travers l'Isthme des Florides, ainsi que l'ensemble des ameliorations projectees on en cours d'execution qui ont ete recommandees par la Commission des ameliorations pour completer le systeme de navigation interieurs parellele a la cote. I should say as to the date of publication of a map its appearance to the public, maps are not always printed at the exact dates that they are made.

Q. By whom was this map, concerning which you are now testifying, made?

A. It was drawn by Major Pussin.

Q. Do you know who Major Pussin was?

A. He was a distinguished French engineer officer who came to America in 1830 to report to the French government upon internal improvements.

Q. Where did you derive that information?

A. From the report itself which I have seen; I have seen the report itself.

Q. Is this map one of the collection in the Howard Memorial library?

A. It is.

Q. Is the map concerning which you have just previously testified as being originally published by the London Magazine, also one of the collection in the Howard Memorial library?

A. It is.

Q. Will you please look at these photo prints which I hand you and state whether they are true and faithful photo prints of the map concerning which you are now testifying and whether you have examined the same and if so what examination you have made?

A. I have examined them at leisure and do examine them now and state them to be true and faithful photographic copies.

Q. And these photo prints which I now hand you, will you please examine them and state whether they are faithful and true photo prints of that part of the map about which you testify which involves the area in dispute in this present litigation?

A. They are faithful copies of that area, of that portion of the map covering that area.

Mr. DYMOND: Counsel for the State of Louisiana for the purpose of numbering the said maps, now request the commissioner to number the same as 13 and 13-a and tenders to counsel for the State of Mississippi for inspection the original of said map and tenders to counsel of the State of Mississippi photo prints 13 and 13-a.

Q. What is the next map in point of age, that you have?

A. 1854.

Q. Will you please look at the map now before you and state what it is?

A. It is a map made by the United States Coast Survey and called Sketch H, showing progress between 1846 and 1854. The date of the map itself is 1854. It takes in from Tiger point in Louisiana to Bayou John in Alabama.

Q. Under what circumstances was this map issued?

A. It was issued as a part of the report of the United — Coast Survey of the year 1854.

Q. Will you please look at these photo prints which are now handed you and state whether they are true and faithful photo prints of the whole of the map now before you and concerning which you are now testifying?

A. I have examined them and do find them to be true and faithful copies of the map.

Q. Will you please now examine these photo prints and state whether they are true and faithful copies of that portion of this map which refers to the area which is in dispute in this litigation?

A. They are correct photo copies of it.

Q. You have examined them carefully heretofore and now to ascertain that fact?

A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to the counsel of the State of Mississippi the said original map and for the purpose of numbering, requests the commissioner to number the said photo prints of said map 14 and 14-a and tenders to the counsel for the State of Mississippi copies of said photo prints.

Q. Will you please look at the map which is now before you and state what it is, where it came from and when it was published?

A. This is a map of Arkansas, Louisiana and Mississippi. It is issued in H. Lange's Atlas of North America published in Brunswick, Germany in 1854.

Q. Have you ever seen the original atlas of which this map forms a part?

A. I have.

Q. Do you therefore know this to be the same as——

A. I recognize this as being the same map as issued in the complete atlas which I saw.

Q. Where did you get it from?

A. I make so many purchases that it would be impossible—I never kept a record of where I got these from. It was probably in Europe.

Q. Will you please look at these photo prints which you now have before you and state whether they are true and faithful photo prints of the map now before you and concerning which you have just testified and whether you have compared the coloring on the photo prints with the original and how that compares with the original.

A. I have compared separately the photography and the coloring. The coloring requiring a more careful examination, I find it to be correct in every particular.

333 Mr. DYMOND: Counsel for the State of Louisiana tenders to counsel for the State of Mississippi the said original map for examination and tenders to the commissioner for the purpose of numbering and identification the photo print concerning which the witness has testified, to be numbered map No. 15, and tenders to counsel for the State of Mississippi a photo print of said map.

Q. Will you please look at the map which you now have before you and state what it is?

A. It is a map of Louisiana representing the several land districts prepared to accompany the surveyor general's report for the year 1859.

Q. Of what surveyor general?

A. Of W. J. McCulloch.

Q. Where did this map come from?

A. It is a portion of the Senate Executive Document No. 2 of the first session of the 36th Congress.

Q. Who was W. J. McCulloch?

A. He was surveyor general of Louisiana. The Senate Executive Document of that late contains—this is No. 8—contains a report from many States and this is the map attached to the report of the surveyor general of Louisiana in that general report.

Q. Have you seen that general report?

A. Yes sir.

Q. Do you recognize this to be the map that accompanied that general report?

A. This is similar to the map in the copy of the report which I have seen.

Mr. DYMOND: Counsel for the State of Louisiana tenders to counsel for the State of Mississippi, the said original map for inspection; and for the purpose of numbering and identification, requests the commissioner to number the said map as map No. 16, and tenders to counsel for the State of Mississippi one of the photo prints of said map.

By Judge GUION:

Q. These maps that you have just examined and concerning which you have just testified, are, I understand, private maps belonging to yourself?

A. Yes sir; they are my private property. I should like to add a statement to that. As the librarian of the Howard Memorial library I would be unable to allow to issue from the Howard Memorial library anything belonging to it. One of the rules of the library is that nothing can go out; therefore for my own purpose I have

held, as my private property, purchased at my own expense, various things of interest to Louisiana, for the past years. Had these maps been a part of the records of the Howard Memorial library they could not have been used for this purpose.

Q. Do I understand that if these originals were to form a part of the records of this case and be left on file in the office of the clerk of the Supreme Court of the United States you would be willing to surrender them?

A. I am not willing to surrender them; they are part of my collection.

Q. Would you be willing to sell us these particular maps?

A. I would not be willing; I would be willing to assist the State to obtain duplicates of them.

Q. I am speaking of the originals, these——

A. You mean to sell these?

Q. Yes?

A. If I could replace them.

Q. But if you could not replace them?

A. I would not be willing.

Q. Do you know whether you can replace them?

334 A. Some of them possibly; others with great difficulty; of some I have only seen one copy; most of them can be found in the Library of Congress; a few of them not.

By Mr. ZACHARIE:

Q. What was your occupation prior to your being employed as librarian of the Topeka library?

A. I was mining engineer.

Q. For how many years?

A. Five or six years.

Q. What knowledge have you, or experience, in regard to the study and identification of maps and photographic prints of maps?

A. It was my work as a mining engineer to make and compare maps.

Q. And you have kept that up since?

A. Only by comparison.

Q. The testimony which you have given in regard to dates and authors and identity of maps; what has that been derived from?

A. In all but two cases, from the information on the map itself. In the two cases which do not bear that I wish to have the opportunity of securing the title pages of the works of which they form a part in order to confirm exactly the dates named by me.

Q. Can you furnish that?

A. I can obtain them.

Q. Prior to your examination in regard to these maps and the photo prints of them, what opportunity, time and care have you devoted to the comparison between the maps and the photo copies?

A. I have had both originals and the photo copies in my posses-

sion for some time, some two weeks, and I have carefully examined them at my leisure.

Q. About how much time have you devoted to these examinations and comparisons, about?

A. It was very much about, probably eight hours.

Q. Has your examination of them been perfunctory or critical of the minor details evidenced on these maps?

A. It has been specially critical of the minor details and of the territory in dispute.

Q. Are you willing, Mr. Beer, to allow us to offer these originals in evidence in the Supreme Court of the United States provided that you would be allowed to withdraw them after the decision of the case, and substitute photographic copies?

A. Certainly I would do so; that is to say, the present purpose concerning these originals is to send them to the Saint Louis Exposition; that exposition I believe will close in November; prior to that it would not be fair to the exposition to remove them.

Q. Would you be willing to sell these particular maps and thereby detract from the perfection of your collection?

A. Of so many as I can obtain other copies I would be willing to sell these or those as the case may be.

Q. How many maps altogether will be in this collection which you propose to exhibit at the St. Louis Exposition?

A. Nearly 200.

Q. And the maps here, I believe, amount to ten?

A. Yes sir.

Q. The taking away of these maps permanently from you, what effect if any would it have on your collection of 200 maps?

A. The collection is not complete, therefore the taking away of these would make it a little more incomplete than it is at present. Personally, I should object to it; but the damage to the collection would not be very, very great.

Cross-examination.

By Mr. TAYLOR:

Q. Are you what is known to the historians and geographers as a cartographer; are you a professional map maker?

A. When I was a mining engineer I was a professional map maker.

335 Q. Professional map maker in the sense we are dealing with maps here; have you ever made maps of countries and States?

A. I have made maps of rivers and estuaries, but not of States and countries.

Q. Have you ever made a map of a coast?

A. Yes sir.

Q. Or of a State as an original publication; have you ever done

any work which would by any proper means class you as what is known as a cartographer?

A. A cartographer, in my knowledge of the term, is a man who receives from surveyors certain indications of localities. He then plots them out on paper and connects them. The cartographer simply hands to the public something he believes to be a correct translation of a surveyor's notes. I have been such a surveyor and made maps from my notes.

Q. Have you ever been a publisher of maps?

A. I never made a map that was published.

Q. Does not the value of a map for the purpose of the geographer and the historian, depend on the reputation of the author of that map as a cartographer just as the value of a legal opinion from a lawyer depends upon his professional reputation?

A. Its value to the world, generally, depends on that. Its true value does not depend on that.

Q. Is it not the universal opinion of historians that it does and do not the map makers of the world, are they not rated and classed according to their reputation just as jurists are classed or any other professional men. Does not each map have its value according to the reputation of the map maker upon its legend?

A. Historians are accustomed to attach value to maps that have the greatest popularity, that have the widest publicity that has been obtained by certain atlases and not by the independent maps. Historians generally quote those documents. The best known atlases were those of Bellin. He never appeared in Louisiana. Bleauw who was a professional cartographer whose maps as relating to the gulf of Mexico are merely notes, records of what was published in France from actual surveys.

Q. Give us the name of the great English cartographer?

A. Jeffreys was the great English cartographer of the period of 1755 from whose map we quoted from; he made many maps, those of which are valuable are the ones made and taken from notes of actual surveyors such as the one of Lieut. Rofs, which was map No. 11.

Q. You have not named the great English cartographer yet, who published maps for many years, that firm in London, I can't think of the name, that great English cartographer that overshadows everybody else; that had all his maps in all the Alaskan Boundary cases? I never heard of the name of Jeffreys before.

Q. That is because you have never studied the Louisiana cartographers.

Q. I have studied the history of cartographers generally. I never heard of Jeffreys. What is the name of that great English firm over in London, don't you know, I can't think of it just now.

A. Oh, Stanford.

Q. No that is not it. It is a household word and you and I ought to remember it; he published more maps—

A. The distinction is very great between—

Q. I know the difference between a cartographer and a publisher.

A. The man who runs the lines is the man responsible for the correctness of the map.

Q. It is the name of the cartographer who has made and published the map that gives character to it, and puts his name to it, is it not?

A. It only makes it sell to the ignorant public.

Q. But the map gets its character from the cartographer?

A. The map gets its character from the surveyor.

Q. Now, what is the name of that great English cartographer that has made so many maps, I can't think of his name?

A. You mean Arrow Smith? He is the man that happened to make a map of the Alaskan district

Q. He made maps of all kinds of things.

336 A. He was a publisher just as—

Q. He made maps for 50 years?

A. But they had no value.

Q. The greatest test was, that they were maps adopted by the counsel in the Alaskan Boundary case.

A. They were the maps that had to be used because Arrow Smith was the only English publisher of atlases of that period; but his map of Louisiana is of no particular value.

Q. Is it not a fact that with historians the primary thing in topography and value of a map is the reputation of the cartographer by whom it is put before the world?

A. Unfortunately, yes.

Q. You admit the fact that that is true?

A. I admit that historians are in the habit of quoting those maps that have the widest publicity, not necessarily the most correct.

Q. That is not my question. I did not ask you about the widest publicity; but, isn't it with historians that the value of the map depends upon the character of the cartographer by whom it is put out before the world, just as the value of a legal opinion of a lawyer at this bar depends on the reputation of that lawyer in this community?

A. If that lawyer had a reputation for consulting correct authorities his opinion would have value. Many publishers have not used correct material.

Q. Does not the public judge whether he uses correct material or not?

A. The public and historians take those books which have the widest circulation and publication.

Q. Now, you say that the ten maps which you have offered here; they are your personal property?

A. Yes sir, I have not desired to say that. It was for other purposes—

Q. I want to ask you about them categorically and get you to explain to us where you got each one of them, who its author was and

the publisher of it and the date of its publication? Start with them according to their number?

A. I will take them in their order of date. 1754, map No. 8. That is the first one.

Q. Will you please tell us where you acquired that map, where you got it from?

A. I got it by purchase from a dealer in Paris.

Q. In what year?

A. I have been acquiring this collection for 12 years.

Q. Yes, I know, but let us keep right to the point; who is the man and what was the date?

A. I am unable to say about any of them what year I acquired them.

Q. Can you tell us the name of the person from which you acquired them?

A. No sir.

Q. You can't tell the name of the person from whom you acquired them?

A. No sir. When I buy a book by an author, if I bought a book from you for instance—

Q. Yes, I know all that, but let us keep right down to the facts. Is that map attributed to a personal author?

A. Yes sir, to Bellin map No. 8.

Q. You have already testified, I believe, as to Bellin's character as a cartographer?

A. Yes sir. That—

Q. That is all I want to ask you about that one. Let us get to the next. Let us take up the next one.

A. The next one is map No. 9.

Q. Where did you acquire that, from whom and in what year?

A. It is impossible to remember the date of the acquisition of 200 maps.

Q. That is all mere argument. I asked you—

A. Then I do not remember about any of them.

Q. You don't remember as to the time which you acquired any of these maps or any of the persons from which you acquired any of them?

A. I do not. There are a dozen or 20 people who are my suppliers.

Q. Is that map attributed to a personal author?

A. This is published by Isaac Tirion of Amsterdam.

337 A. You mean it purports to be published by—

A. There is nothing on this map that shows that; but I have in my possession the book containing a similar map to this original.

Q. There is nothing on the face of that map that shows its origin?

A. I have a book of which this forms an illustration.

Q. That wouldn't inject anything into the face of the map. You say the face of the map does not show anything as to its author?

A. No sir; but if a copy of the book could be obtained——

Q. I am asking you as to facts that you know.

A. If your maps are all subject to the same examination you will have a hard time.

Q. We are going to have a little more authentic maps than these?

A. I doubt it.

Q. What does the next one purport to be?

A. Referring to map, No. 10. That——

Q. Does that purport, on its face, to come from a personal author?

A. That purports to be issued by Thomas Jeffreys a far more celebrated cartographer than Mr. Arrow Smith.

Q. Well, it purports to be issued by Jeffreys, in what year?

A. In the year—I can't see it there—1775.

Q. You don't know when or where or from whom you got that map?

A. No sir; but * stated distinctly that copies of all of these maps can be obtained and referred to in the Library of Congress.

Q. That is mere matter of argument. They may or may not. I just want to get at the facts within your knowledge.

A. Well, they are the facts respecting these.

Q. Take the next one? (Referring to map No. 11.) Does that purport to come from a personal author?

A. This purports also to be issued by Jeffreys.

Q. In what year?

A. In the year 1775. Maps 10 and 11 are portions of the American Atlas by Jeffreys published in London at that date.

Q. Take the next one? (Witness refers to map No. 12.)

A. That is a London magazine one.

Q. Does that purport to come from a personal author?

A. No sir. As historians and cartographers, we know pretty well——

Q. Let us get right down to my question?

A. It bears nothing on its face whatever.

Q. Then you don't know when or where you got that?

A. No sir.

Q. What is the next one?

A. (Witness refers to map 13.) This is a map made by Major Pussin.

Q. That is, it purports to be made by Major Pussin?

A. Yes sir, on the face of it; it states absolutely that it is drawn by him.

Q. That is, it purports by its legend to be?

A. Yes sir.

Q. You don't know when and where you got that?

A. No sir.

Q. Take the next one?

A. (Referring to map 14.) This is a map that was a part of the report of the Coast Survey of the United States of the year 1854.

Q. That is enough about that. It purports to come from the Coast Survey of that year.

A. It came from an old book—

Q. What is the next one?

A. The next map (referring to No. 15) is from Lange's Atlas.

Q. That purports to come from a personal author?

A. No sir; this purports to be published by H. Lange as a portion of his atlas; probably the maps were all drawn by different people, they may have been.

Q. So that map does not purport to come from a personal author?

A. No sir, from nobody in particular.

Q. Take the next one?

A. The next one is No. 16. It is a part of the report of the surveyor general of Louisiana for the year 1859. But the general title of the volume in which it appears is a report of the Land Department of the United States. This map is a part of the report of the surveyor general to the Land Department of the of the United States.

Q. What year?

A. 1859.

Q. That purports as you expressed?—

A. To be made under the charge or under the management of W. J. McCulloch, probably not by him—

Q. You have been interrogated as to ten maps, the most ancient of which in point of date is what?

A. 1754.

A. And the most recent?

A. 1859.

Q. Is it not a fact that when we look at these ten maps of different dates as an extended tableau, that they are so many different pictures of this general region in controversy, made at different times by different people?

A. Yes sir.

Q. Is it not a fact that there are no two of them alike?

A. They are made at different dates.

Q. That one picture is different from every other picture?

A. Every photograph of myself is—

Q. Let us don't get into argument. Is it not a fact that every one of these pictures of this territory is different from every other picture?

A. Yes sir.

Q. Is it not a fact that there is a very wide divergence between them. Let us take, for instance, the earliest picture or the earliest one of these maps, take that picture there and then take the most recent picture, is it not a fact that there is a very wide divergence in the pictures of this territory?

A. They are on different scales.

Q. I do not ask you for the reason for the difference. That is mere argument, I ask you if it is not——

A. There is a difference between one map and another, yes sir, a very great difference.

Q. That is not my question. I am asking you about these particular maps. Isn't there a difference between these particular maps, taking them from the first to the last, isn't there a wide divergence in them; take the earliest and the oldest maps purporting to be pictures of this territory down there, don't they diverge widely from each other?

A. Yes sir.

Q. Is it not a fact that in the progressive making of maps of a newly discovered country, considering the meagre information that exists at the start, is it not true that the first sketches are most always very crude and imperfect, as a rule in the map making of new countries, take for instance the first maps made of the discovery of this western hemisphere, when we take them, the crude things, are they not cartoons of what the facts were?

A. Not when they are made from the notes of surveyors; when they are made by publishers of ordinary cartographers' works, yes.

Q. But, is it not a fact that at that time there was no data from which any publisher could make a map. Take, for instance, the map, the first picture of this hemisphere?

A. But the map of Louisiana, it fortunately differs.

Q. Don't let us get off into argument, stick right to the question. I say is it not a fact that in reference to the earliest map, let us take for instance the famous map which I have seen in the Spanish admiralty at Madrid, the map made by Columbus's navigator of which the originals I have had in my hand, by which he undertook to show this continent, this country that Columbus had discovered; is it not a fact that when we take it as a picture of what this continent is today, it is a cartoon of the actual facts?

A. Those were only cartographers that made those things.

Q. I am asking you the fact, is it not true that when you take those early maps, those pictures, before any data——

A. It is a fact that the map of Juan de la Cosa to which you refer it is a fact that the point of Florida was ascertained geographically, that the remainder of the gulf of Mexico is drawn entirely from imagination, that is a fact, but they were points that were ascertained geographically.

Q. The question I want is, that as a general rule, the maps that were drawn in the early days of this country just about the time of its discovery or shortly after when the data was wanting, they were just vague sketches?

A. The earliest map we have in hand is 1754, that does not apply to that.

Q. I am not asking you about that. If you will reply to the questions as I ask them and not get into argument it will save a great deal of time and trouble.

A. I thought we were limiting the testimony to this date.

Q. I am getting to that. The primary object of these questions to you, is this, Is it not a fact that as the knowledge of cartographers has widened, that each decade has contributed more, and more perfect maps and as we come closer and closer to the present date we get in these maps, pictures, that are absolutely more accurate and perfect than the earlier ones?

A. Yes sir, the world has moved.

Q. So, is it not a fact, that as a general rule, in reference to the earlier maps of this country in general and of the gulf of Mexico and of this particular territory in particular, that the earlier ones are, as tested by personal experience, widely defective, as a general rule?

A. Oh no, distinctly not. When Iberville and Bienville came to Louisiana to found the colony of Louisiana, soundings were made and geographical points were secured which were as correct, which being represented by them in maps, are as correct as any map of today.

Q. You mean that in the particulars which you have indicated they are as accurate. But, taking them as a whole, would you say a map made in the time of Iberville or Bienville as correct a picture of the coast here as the one that is made today by the Coast Survey?

A. No sir, but I should maintain that a point of land discovered to be dry land—

Q. You are going into an argument again. You are arguing the case of Louisiana. I don't want you to argue the case with me. We will argue the case before the Supreme Court. I want to get the facts from which we can argue the case. Did you pay any attention to the arguments in the Alaskan Boundary cases?

A. I have not had time to read them.

Q. You did not read the discussions then, that took place upon the value of maps in controversies of this kind?

A. I have read many other discussions on those.

Q. Have you read the discussions which took place which occur in most of the books on international law as to the worthlessness of maps in reference to a settlement of boundaries, boundary controversies, as a general rule, have you read the dissertations, such, for instance, as the book of Sir Travers Trist on International Law, of the worthlessness of maps as to settlements of boundary controversies?

A. I have observed that historians have fallen on worthless maps generally.

Q. Have you read any dissertations of international lawyers upon the worthlessness of maps?

A. Who discussed them ignorantly.

Q. You mean the international lawyers?

A. Gentlemen that have not been provided with those points which are necessary to show the true value of maps.

Q. How did you find that out?

A. By the names of the maps they mention, by the distinguished cartographers they mention.

Q. So you do not think they are a class of lawyers that know anything about—

A. They are guided by going to the libraries.

340 Q. You have seen dissertations upon the worthlessness of maps?

A. Yes sir and agree with them. There are worthless maps and good maps.

Q. There are worthless maps and good maps?

A. Yes sir.

Q. Does not the difficulty occur then, of attempting to settle boundary controversies by these early and imperfect maps which were made before the date existed upon which an accurate map could be founded?

A. Frequently, yes sir; early boundaries were decided on maps which were made by persons who constructed them purely on their imagination. I am referring to boundary discussions which took place before 1754.

Q. Mr. Beer, is it or not the fact, that you are now and have been taking what might be called a partisan interest in the preparation of this part of the case of the State of Louisiana?

A. It is not a fact.

Q. Didn't you answer, with some warmth, to me, yesterday, that the land of Louisiana could not be taken away from her, right in this office, when we began discussing it?

A. Certainly, under the terms of the treaty. I was speaking as one historian would speak to another.

Q. Didn't you speak to me with that sort of warmth as one lawyer on one side of a case would speak to a lawyer on the other side, when I was speaking to you yesterday?

A. It was a pleasure to take a rise out of you.

Q. You felt a lawyer's spirit?

A. No; I have no lawyer's spirit; I may possess a lawyer's instinct. I would like to say something and that is, that I have studied the history of Louisiana very thoroughly, I came here 13 years ago, I have devoted all the time I could spare from my duties as librarian, to the study of the history of Louisiana. It is not in any partisan way or spirit that I am making any of these statements.

Q. I did not mean anything unamiable. I do not blame you feeling that way, and I do not mean to say that it is at all unnatural; perhaps if you lived in Mississippi you would feel the same way about her.

Q. But I am not even a Louisianian.

Redirect examination.

By Mr. ZACHARIE:

Q. In a part of your cross examination you stated you were unable to state either the time or from whom you had purchased these various maps. Now, will you please explain why it is impossible for you to mention the dates of the various purchases of persons from whom you bought those maps?

A. I have made purchases extending over 20 years, covering both maps and books for myself and for institutions, which leaves me entirely cloudy as to the different dates that I procured each item.

Q. About the parties from whom you purchased these various maps, why is it impossible for you to give the names of the parties from whom you purchased these various maps?

A. I could only state generally that from certain dealers, celebrated dealers in maps, I have obtained them, but which particular maps I have obtained from them I could not particularize. Many of them came from a dealer in Paris, Dufoss, who is well known.

Q. What were your orders or the circumstances under which you purchased them. Did you have a standing order for all maps relating to Louisiana, or did you make a particular request for some particular map.

A. It would be unsafe with all booksellers to leave a standing order. I have two classes of orders; one to send me all their catalogues, and the other to send me everything relating to Louisiana.

Q. So, as I understand you, you kept no distinct notes of where you got particular maps?

341 A. None.

Q. From whom or at what dates?

A. No sir. Some have been purchased—this is taking up the time of the court but I am describing how I remember obtaining some. I went on to Amsterdam and went through the collection of Meuller, one of the most celebrated dealers in Europe and picked out those maps. It is utterly impossible for me to say which they were, at this date.

Q. I understand you to say, did you, that the 13 years that you have been making this collection of Louisiana maps, you have acquired by purchase or otherwise, some 200 maps?

A. Yes sir. A portion of them contained in atlases but the particular value of the atlas was its map of Louisiana.

Q. In regard to the testimony that you have given, in regard to the authenticity of these maps, as to by whom they were made and by whom published, etc., how have you arrived at that knowledge?

A. I attribute to an author, a book on the title page of which his name stands. I attribute to a map maker a map on which his name stands.

Q. Now, where there is no name on the map, how do you arrive

at your conclusion as to who made the map and when it was made or published?

A. By study only and by comparison with the writings of persons, the great cartographers, the great histories of cartography, the greatest of them being Justin Windsor. I should like to say that in the cartographical history of Justin Windsor is to be found the greatest amount of information upon maps of the early period of American history.

Q. Have you any doubt as to the authenticity of these maps, or if you have any such doubt in regard to the authenticity of any of these maps about which you have testified, will you please state what doubt you may have, or not?

A. If authenticity means boundary geographical correctness I should say that no map, until 1754, yes, as early as 1700, possesses absolute authenticity. The maps ordinarily published, such as the maps in atlases, while being the thing represented to the world and to history as being a conformation of a country are but reproductions of larger maps which have actually been established from the notes of surveyors and geographers. I have no doubt whatever as to the authenticity, so far as the good faith of the publishers of any of those maps.

Q. But your only doubt is as to the sufficiency of the data up to that date upon these maps are found?

A. The data has gone on increasing in amount and value up to the present.

By Mr. TAYLOR:

Q. You have stated that the data has been steadily increasing and improving, upon which these maps are made?

A. Yes sir.

— Is it not necessarily a result that through that fact, the most recent maps are the most perfect maps?

A. The improvement has been—

Q. Just answer the question?

A. I will answer yes. The perfection has been one of detail, not of the main facts, not of the external points from which measurements have been made. The perfection of the point in question, in the disputed question, was as certain 200 years ago as today, but the joining up—

Q. Let us put that to a practical test. Let us take for instance, this Dutch map there and compare it with that map and see the general conformation of what is called the Louisiana marsh; you see there is a difference of detail, is there not, a wide and radical difference?

A. My statement is, that the point ascertained by Bienville when he made his soundings in coming from Biloxi to New Orleans the point of land is in the same place today as it was then.

Q. That has no relation to my question. Let us come and see if I can get an answer to my question; let us take these two maps, this Dutch map 1764 No. 12, and map No. 15,

1854; put your eye here and look upon this conformation of this disputed territory, on this map, and then look at its conformation on the other map; does it not on the face of the map show that there is a wide divergence in the shape of the two territories on the two maps?

A. They are on different scales.

Q. Answer my question; don't evade my question?

A. There is a wide difference.

Q. Anybody in the world can see there is a wide and radical—

A. Difference between a map on a scale of ten inches to a mile and on a scale of sixty inches to a mile.

Q. Don't you know that the scale has got nothing on earth to do with the difference in the conformation, that one is one shape and the other another shape?

A. They are widely different, yes.

By Mr. ZACHARIE:

Q. In regard to these differences, in the conformation of the territory between these different maps the most ancient and the most modern, may or may not that be accounted for by a change in the configuration of the territory?

A. If all maps were made from direct observation I should say yes. Many of these maps, however, are made by copying from older maps and you may have a map of 1800 not as far advanced in perfection as another map of 1760 on account of superior material from which the cartographer has worked.

Q. Let us come right back to the question which I asked you, may or may not the difference, the wide divergence, which exists between the most ancient and the most modern map, be produced by the changes which have taken place.

A. It may be so produced.

By Mr. TAYLOR:

Q. Have you any reason to believe that any such changes have taken place in the last 100 years in reference to the conformation of this coast that would make this radical difference?

A. Every reason.

Q. Give us the reason?

A. Do you wish to go back to geological time?

Q. No, we are talking about what has happened in the last 100 years?

A. The last 100 years?

Q. What I want to know is what your knowledge is or your data on which you base the assertion that in the last 100 years there has been a radical change in the conformation of Louisiana?

A. To begin with, I didn't visit it 50 years ago and never visited it since.

Q. We won't pin you down to that. Give us the date you have got any personal knowledge, leaving you to supply it, that there

has been any marked change in the conformation in the last 100 years?

A. The formation of the delta of the Mississippi—

Q. I am talking about this piece of land down on the coast?

A. Which is a part of the delta of the Mississippi river

Q. If you call that the delta of the Mississippi—

A. Undoubtedly.

Q. If that is what you mean—

A. That is land formed by this soil brought down by the Mississippi.

Q. I am talking about this sea coast, the formation of this sea coast?

A. I am speaking of the conformation of that part of Louisiana which is Saint Bernard parish.

Q. I am talking about these islands around Saint Bernard?

A. That all goes to form the delta to the Mississippi river. That delta was formed out of soil brought down by the Mississippi river which up to the turning southward of the River Mississippi was carried eastward and that turn is shown on all the maps; it is

343 seen to turn south just below New Orleans. At that time it was the gulf of Mexico beyond it. All of that soil was carried eastward by the trend of the river and went to make up that portion of the delta. When the river turned southward it ceased to carry that material eastward and that land, then formed, was exposed to all the changes produced by the action of the storms and waves upon the soft land, by the rivulets that were formed by the rain and which cut up all that surface then newly made. Those changes have been going on ever since for the last 200 years, it has been changing perpetually becoming more and more cut up except where the land had vegetation on it and held it together.

Q. I understand, therefore, you say as a historical fact, that within the last 100 years the conformation of this sea coast, and the islands around Saint Bernard parish has been so radically changed as to account for the divergence of the maps of 100 year-ago or a little later, with the maps of today?

A. If you understood, it was by injecting in what I said a great deal I did not say.

Q. That is what I want to find out.

A. I mean to say that perpetual change is going on—

Q. I am not talking about what may or may not happen. We don't have to go into any abstract speculation. I was asking you as to what changes in the conformation of this coast from your knowledge have taken place during the last 100 years?

A. From the geological knowledge I have of surface change and of the effect of tides and storms on the coast, I state that great changes have taken place in that coast during that period.

Q. Just how great, you do not undertake to say?

A. That would have to be from personal examination. I don't profess to have been on the spot.

Q. You have never been on this coast ?

A. No sir.

Q. You have never seen any part of this territory ?

A. No sir.

HENRY ROMANSKI, witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you live ?

A. New Orleans.

Q. What is your business ?

A. Photo engraving.

Q. Will you please examine these maps which are now presented to you and state whether or not you have ever seen them before and if so under what circumstances ?

(Counsel refers to the maps concerning which the last witness, Mr. William Beer has just been testifying.)

A. The first information I had about those maps was given me by somebody or other, that those maps had to be reproduced ; I never saw them before. Finally Mr. Bellocq a commercial photographer in this city here, came to us and stated that there were a number of maps ten or 15, to be photographed and that he believed we could make the negatives better than by the usual dry plate process.

Q. Did you photograph these maps and make negatives of them ?

A. Yes sir, they were photographed in my place and under my direction.

Q. And did you make negatives of them ?

A. Yes sir.

Q. What was done with these negatives ?

A. They were turned over to Mr. Bellocq.

Q. Were those correct photographic negatives of the maps ?

A. Yes sir ; I believe we made a pretty good piece of photographing, as you see.

344 Q. Did you inspect them and compare them after you had made the negatives ?

A. Yes sir ; I looked at them casually, at the same time it was not sufficiently important to inspect them as thoroughly as would be necessary for a very important case. We simply considered it as a small order. It was made quickly and turned over without any particular inspection, as it was unimportant.

Q. Unimportant from a financial point of view ?

A. Yes sir ; that was a quick cheap job.

Q. Was there any inferiority about the work you did ?

A. No sir. We have a reputation of doing first class work and would not deliver anything that was not exactly first class.

Q. Was the work you did in this case first class?

A. Yes sir, I guess so.

Q. Was it as well as could be done?

A. Yes sir. If it was not we would have made it over until it was good.

By Judge GUYON:

Q. You are a photo-engraver?

A. Yes sir.

Q. You have some reputation here to sustain in that business?

A. Yes sir. We do about $\frac{2}{3}$ of the business in the South. We have the largest establishment out of St. Louis and do work from Florida to Arkansas.

Q. Would you be willing to go on record then as saying you merely guessed that your reproductions are correct, the reproductions of these maps?

A. They could not help but be accurate; they are exact reproductions, because it is a mechanical process, there is no hand work about it, it — a perfect mechanical process. I state it is absolutely correct.

Q. You used the word guess just now?

A. Yes sir; that is in the quality of the work; but not on the accuracy of it.

Q. I am speaking of the accuracy of it; I don't care whether the work is pretty to the eye?

A. I mean that.

Q. I prefer accuracy to looks?

A. It is absolutely accurate.

Cross-examination.

By Mr. TAYLOR:

Q. I understand you to say, as it was a small job and the financial consideration was not great you made no very special examination of it afterwards?

A. Because it was a mechanical process.

Q. You said it was a small job and you made no particular examination?

A. The examination of a negative is got by holding it to the light and seeing if there is some imperfection.

Q. Did you go through all that in this case?

A. Yes sir.

Q. What did you mean just now, then, when you said because it was a small job you made the examination very casually?

A. Not casually; but it was got out in the regular routine.

Q. Why did you make that remark about it being a small job and examining it casually if you——

A. I wanted to convey the idea that it was done in the usual way without—

Q. There were no unusual pains taken with it?

A. There was no unusual importance attached to it as we have continually so many maps to reproduce for printing purposes.

Q. Why did you put so much emphasis on the fact of it being a small job there was no special attention paid to it?

A. I can't say I had any special purpose; I simply say it is mechanical, and of course being mechanical it is bound to be true.

Redirect examination.

345 By Judge GRON:

Q. You say you delivered those plates to Mr. Bellocq?

A. Yes, sir.

Q. For what purpose?

A. To make the paper prints.

By Mr. ZACHARIE:

Q. Then you did examine the negatives in order to see that the detailed information contained on the original was properly brought out in the negative?

A. The examination is triple. In the first place the operator who had charge of that special order is under salary and part of his duties is to satisfy our customers; in other words, to do excellent work, so in case it was not correct or if the negatives were not good, he wouldn't say anything but go over it again and make another negative until it was good, he is responsible in the first place. Suppose it was a very difficult subject, he would come to me and ask me how it could be done properly, ask my advice how to do it. The third examination is by our customer, Mr. Bellocq. If the negative was not so as to produce excellent prints, he would reject it.

Q. In all these examinations the comparison would be made between the negative and the original?

A. Yes, sir. We know absolutely that with modern appliances in photographing, photo-engraving, with excellent lenses and wet plate process, there is no possible way of making a mistake in accuracy; in other words, if we were to spend \$100 to make it wrong we couldn't do it because the lenses are good and accurate reproduction must take place.

Recross-examination.

By Mr. TAYLOR:

Q. You spoke of your salaried man who did this work. Did you have anything to do with this work personally?

A. No, but I have supervision of the work.

Q. Did you go over the work and make these comparisons?

A. I make them, all the time.

Q. Did you, yourself, take these negatives and maps in your hands and make the comparisons?

A. I looked at the negatives; that is all that is necessary.

Q. It was your salaried man that you said did the work, just?

A. Under my supervision, under my orders.

Q. But you personally did not do it?

A. But I am responsible for his work.

Redirect examination.

By Judge GUION:

Q. Is he a competent man?

A. Yes, sir.

Q. What is his name?

A. Lewis Fritch.

ERNEST J. BELLOCQ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. 1026 Conti street, near Rampart.

Q. In New Orleans.

346 A. Yes sir.

Q. What is your business?

A. Photographing, photographer.

Q. Did you make a contract with the attorney general of this State, to reproduce by the photographing process, certain maps?

A. Yes sir.

Q. To whom did you entrust the maps for the purpose of having them photographed?

A. Mr. Romanski, my photo-engraver.

Q. The same Mr. Romanski who has just testified?

A. Yes sir.

Q. Are these the maps that you delivered to him; will you please look at these maps and state whether they are the maps?

A. Yes sir.

Q. Did you receive from Mr. Romanski the negatives that he made of those maps?

A. Yes sir.

Q. Will you please look at these photo prints of maps marked Nos. 8; 8-a; 9; 9-a; 10; 10-a; 11; 11-a; 12; 13; 13-a; 14; 14-a; 15; and 16, and examine them?

A. Yes sir.

Q. And state whether they are photo prints made from the negatives received by you from Mr. Romanski?

A. Yes, sir, they are.

Q. Are they the exact photo prints of those negatives?

A. Yes sir.

By Mr. ZACHARIE:

Q. Did you examine them carefully, one by one, as you received them from Mr. Romanski?

A. After the print was made I don't have to examine them. I have got the negative and I make the print, and it is bound to be what it is.

Q. Did you examine the negatives or prints to see that they corresponded exactly with the originals?

A. The negatives and the maps?

Q. Yes?

A. No sir; I did not.

Q. You did not?

A. No sir.

Q. Did you examine the prints themselves to see that they were correct reproductions of the maps?

A. Well, if you have got the negative and print it, put a piece of paper against it, it is bound to be the same as the negative. When you print a negative you put a piece of paper right next to it and it is bound to come out the same as the negative.

Q. I am now speaking of comparison between the prints and the maps themselves?

A. If I examined them afterwards?

Q. Yes?

A. No sir.

Q. Well, I wish you would do — now?

A. All right.

At this stage of the proceedings, the commissioner adjourned the hearing, for recess to be resumed again at 2:15 p. m. at the same place and date.

2:15 p. m.

Pursuant to adjournment for recess, the hearing was resumed with Mr. Bellocq, the last witness on the stand before recess whose examination was continued.

All parties present:

By Judge GUYON:

Q. Mr. Bellocq, have you, during recess which has been taken, carefully examined the maps and the photo prints and compared them one —

347 A. Yes sir.

Q. As a result of your examination, are you prepared to say whether or not the photographic re-prints are true and faithful photographic reproductions of the original maps?

A. Of course they are, faithful reproductions.

Cross-examination.

By Mr. WILLIAMS :

Q. You refer, do you, to the original maps designated by number to you this morning ?

A. The maps I compared this and that

Q. They were named off to you by numbers, were they not ?

A. How *they* were named by numbers ?

A. I just looked at the back in order to go quickly to see, to testify today so I wouldn't lose any time, to examine it closely from there to there.

By Mr. ZACHARIE :

Q. He asked you, if these are the maps which by number have been submitted to you today ?

A. Yes sir.

By Mr. WILLIAMS :

Q. Before the adjournment for lunch ?

A. Yes sir.

By Mr. DYMOND :

Q. You refer to the maps which have been numbered from map 8 to map 16 ?

A. Yes sir.

By Mr. WILLIAMS :

Q. You mean that those that have been numbered are photographic views of the original maps ?

A. Yes sir.

LEWIS FRITCH sworn and examined on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND :

Q. What is your business ?

A. Photo-engraver.

Q. Where do you live ?

A. 328 Rocheblave street.

Q. In the city of New Orleans ?

A. Yes sir.

Q. Are you in the employ of any one ?

A. Yes sir, I am employed by Mr. Romanski.

Q. Is that the Romauski Photo-Engraving Company ?

A. Yes sir.

Q. Is that the photo-engraving company that had charge of the making of the negatives of these maps?

A. Yes sir.

Q. Mr. Fritch, have you examined these maps which are now before you, the photographic reproductions of which are numbered from map 8 to map 16 inclusive?

A. I have.

348 Q. Did you have anything to do with the making of the negatives from which these photographic prints were taken?

A. Yes sir.

Q. What did you use, as the original in making the negatives?

A. I used the maps.

Q. Are these maps the maps that you used?

A. Yes sir.

Q. Did you make the negatives of those maps?

A. Yes sir.

Q. Did you compare those negatives with the original maps that you had made the negatives from?

A. Yes sir.

Q. Were those negatives true and faithful photographic negatives of the original maps?

A. Yes sir.

Q. Do you recognize these photo prints numbered from map 8 to map 16 to be photo prints from the negatives made by you?

A. I do.

Q. Are they as correct and faithful reproductions as it is possible, by the photographing process, to make them?

A. Yes sir.

Cross-examination.

By Mr. WILLIAMS:

Q. Where did you get the original maps?

A. From Mr. Bellocq.

Q. Is he the gentleman who has just testified?

A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence the photo prints of the original maps numbered map No. 8 and map No. 8-a; map No. 9 and map No. 9-a; map No. 10 and map No. 10-a; map No. 11 and map No. 11-a; map No. 12; map No. 13 and map No. 13-a; map No. 14 and map No. 14-a; and map No. 16.

Capt. THOMAS SUMMERALL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

— At Biloxi.

Q. In what State?

A. Mississippi.

Q. By whom are you employed?

A. I am employed by Mess. Lopez and Dukate, the firm.

Q. What is your present occupation?

A. I am captain of the steamer Julius-Elbert.

Q. In your present employment do you operate the steamboat Julius-Elbert between the factory of the Louisiana Oyster Company Limited at the Rigolets and Three Mile bayou?

A. Yes sir.

Q. Are you familiar with the country known as the Louisiana marshes?

A. Well, somewhat, yes sir.

Q. How long have you known it?

A. I have been going to what is known as the Louisiana marshes and called the Louisiana marshes ever since 1884.

Q. In what occupation were you engaged during that period of time?

A. I have been catching oysters principally.

349 Q. That would cover, then, a period of 20 years.

A. Yes sir.

Q. In that period of 20 years has there been any change in the topography of the country, I mean by that, the shape or form of it or of its lakes or bayous?

A. Well, in some places I find there has been some changes.

Q. Would you mention the places where there has been changes?

A. Yes sir.

Q. Where?

A. There has been a change at Three Mile bayou.

Q. What has been the change occurring at Three Mile bayou?

A. Well I don't know how long—it has been since the '93 storm though, I recollect the point on the west side of the bayou used to extend out, it was land all the way, now it is cut in two and forms an island on the outside; before that there was a point still further out; it is all washed away now.

Q. Is that in the parish of Saint Bernard?

A. That? I think it is but I would not say for sure.

Q. Is it called Saint Bernard parish?

A. I couldn't say whether it is or not. If Three Mile bayou is in Saint Bernard parish it is, if it is not, it is not.

Q. Are you familiar with an island called Round island just north of Petite pass, a little north of Petite pass?

A. An island? I have seen an island there. I mean there are two islands there but I don't know which one you call Round island, I suppose there is one what we call Half Moon island and the other one may be Round island, as far as I know.

Q. Is there any island in that neighborhood that existed some years ago, but today is not above water?

A. Not to my recollection.

Q. Do you know of an island in that locality that is, or was called Round island?

A. Call it by the name that is on the chart, I think I saw it on the chart.

Q. Is the island visible above water which you saw on the chart named Round island?

A. I never noticed whether that is the one above water or not.

Q. Do you know of any island having disappeared in that locality?

A. Yes sir; at Grand pass.

Q. About St. Joseph's island, has there there been any change or disappearance of it?

A. There has been some.

Q. Was it small or considerable?

A. It was a small island when I first saw it, but now it is washed away, there is only a little bit of a mud lump there now.

Q. Are you familiar with the coast line extending from Petite pass eastward to Isle au Pitre?

A. Yes sir.

Q. Has there been any change down in the marsh south of that coast line in the past 20 years?

A. I don't know.

Q. I understand you to say you don't know?

A. There is one cut off, one place that has been cut through that I know, in the past 20 years, down in the marsh in Carako bay.

Q. Could there have been any other changes there without your knowing them?

A. Yes sir, there could have been.

Q. Is the mouth of Three Mile bayou, or, is Three Mile bayou of the same width as when you originally saw it?

A. No sir, it is wider.

Q. Is it much wider?

A. Well, it is, I suppose 50 to 75 feet wider as well as I can remember, on account of this point being cut off.

Q. Has there been any change in Nine Mile bayou?

A. I don't know.

Q. Do you know what caused these changes?

A. No sir, not any more than heavy winds and tides.

Q. Did you notice any change as the result of any storm, and if so what storm?

350 A. I never noticed any change outside of the October storm in '93.

Q. Was that 1893?

A. Yes sir.

Q. Did it produce any of these changes you have been testifying about?

A. Yes sir; I think it did.

Q. Do you know whether this land in dispute in this boundary suit was overflowed during any of these storms?

A. Yes sir, I saw it overflowed.

Q. When?

A. I saw it several different times.

Q. Will you state about the date?

A. I saw it on the 3rd of October 1894. I was in the marsh at that time.

Q. You were in the marsh?

A. Yes sir, that is one particular time I saw it.

Q. '94 or '93; you have spoken of the October storm of '93?

A. '93 I mean, I was mistaken, I believe I am talking a little too fast.

Q. You correct your date?

A. Let me study over the matter and I will see about it, I don't want to make any mistake if I can help it; the first storm was on the first of October '93; it was on the 7th of November '93 we had another pretty bad blow, a few days after the October storm.

Q. It was overflowed then?

A. Yes sir.

Q. Did I understand you to say you were in the marsh then?

A. Yes sir.

Q. On that occasion?

A. Yes sir. I was not in the marsh, I was in a boat.

Q. At what point were you in this storm of November 7th?

A. I was lying in Bayou Mussle.

Q. How far was that from Three Mile bayou, about?

A. I don't know the distance.

Q. I don't ask you to state exactly?

A. Somewheres between ten and 15 miles, as well as I can judge.

Q. In which direction from Three Mile bayou?

A. Somewheres about south, south by east or south by west I don't know.

Q. Do you remember of any other storms in which this territory was inundated, if so, what time?

A. Yes sir; I don't remember the day nor the date, but at the time of the storm of Galveston, that wrecked Galveston, I was in the Louisiana marsh at that time.

Q. At what point?

A. I was lying at Martin island.

Q. Where is that island?

A. It is on the east coast of the marsh.

Q. How near to Isle au Pitre?

A. That I don't know.

Q. Can you fix some part or some point on that coast which was near enough I don't think that Mussle bayou is given on the map?

A. I don't know about on the map.

Q. How far west or south of Isle au Pitre were you, can you state?

A. I can't tell you exactly how far, I can tell you about as well as I know, it was somewhere in the neighborhood of 20 miles.

Q. Was that south?

A. I couldn't say it was direct south, it was a little southwest.

Q. What bayou was the nearest bayou to you? Was it Three Mile bayou?

A. No sir.

Q. Nine Mile bayou, Johnson's bayou?

A. Well, I guess what we call, Scow pass, that was about as near a bayou as there was to it.

Q. Were you then south of Caraho bay?

A. No sir.

Q. Were you about abreast of it?

A. No sir.

By Judge GUION:

351 Q. What direction were you from it?

A. About southeast direction.

Q. How far, about?

A. Five or six miles.

Q. Five or six miles southeast from Karako bay?

A. In a southeast direction.

By Mr. ZACHARIE:

Q. To what extent was this territory inundated so far as you could see?

A. Well, we sailed from Martin island, sailed across the marsh; we entered the mouth of what we call Otter bayou, and then we went up into what is called La Cinch for a harbor.

Q. That is what is called Bayou La Loutre?

A. Yes sir.

Q. What was the condition of that territory in regard to inundation, so far as you could observe. Were you able to navigate over the marsh?

A. Yes sir, we just sailed right across the portion of the marsh until we got to Otter bayou, to the mouth of Otter bayou and then on account of the high banks we had to follow the stream then.

Q. Was it then generally or only partially inundated?

A. It was covered all over as far as I could see.

Q. Could you form any idea from the navigation of your vessel how many feet of water there was over it?

A. I never sounded.

Q. What does your vessel draw ?

A. It draws two feet of water.

Q. You passed easily over this territory without grounding, or did you ground ?

A. We didn't ground, we sailed over it clear.

Q. Did you notice, after these storms, any peculiar changes in the topography of that country, that is to say, in regard to the number of bayous or the increase of water in the interior, or otherwise, if you did please state any changes if you saw any, after these various storms ?

A. There are two or three different places I have seen changes since storms.

Q. To what extent ; describe the changes.

A. Well, Creole gap is somewhat wider than it was.

Q. How much wider, do you think ?

A. I have no idea.

Q. About. Since what storm or storms of what year has Creole gap enlarged its mouth ?

A. It gradually seems to enlarge all the time.

Q. Then how many storms altogether have you witnessed in that territory ?

A. I only witnessed one.

Q. I thought you said you had witnessed two ?

A. Not in the marsh.

Q. Didn't you say October 3rd and November 7th ?

A. I said the marsh had changed since the October storm, I did not say I was in there.

By Judge GUION :

Q. Do you know anything about the present width of Creole gap approximately, could you give us, approximately, its width, about ?

A. Well, no sir, I don't know that I could.

Q. You could state about, could you not ?

A. I could say about, but I could not say—

Q. We know you never measured it but—

A. I should judge, to the best of my knowledge, it is 200 yards in some places ; at each mouth anyway.

Q. Do you know whether, at any time previous, it was of a less width than it is now ?

A. Yes sir ; I think I do. I think I can remember.

Q. Will you kindly tell us what the difference is between the time you first noticed it and now ?

A. Only by looks.

Q. That is what I mean.

A. By looks it is wider than it used to be, but I could not say how much.

352 Q. Do you know how much, about ?

A. No sir.

Q. Is it twice as wide ?

A. Oh, no sir.

Q. Do you know anything at all about the beginning of Creole gap, when it first started?

A. Only what I heard.

Q. Would you give us the names of some parties from whom you heard this?

A. Yes sir.

Q. Give them, please?

A. Captain Steve Maloche. He lives in Biloxi at present.

Q. Any one else?

A. No sir.

Cross-examination.

By Mr. TAYLOR:

Q. Where were you born?

A. I am a Mississippi Hoosier.

Q. Have you ever lived in Saint Bernard parish?

A. No sir.

Q. As I understand, whatever you know about this district the knowledge you have gained by just sailing in your vessel?

A. Yes sir.

Q. All these changes which you have indicated they have referred to changes in this island part out here where the islands are. These changes that you have indicated are——

A. It is in the passes.

Q. Out where all these islands are?

A. It is in the passes.

Q. Do you know anything about any changes that have taken place in the last twenty years in the mainland back?

A. Only one that I can say.

Q. In the mainland?

A. What do you mean by the mainland? Main marsh?

Q. I mean the mainland as it is there? Isn't there a great group of marsh islands with water in between them. Take for instance, Isle a Pitre, and all this land in that direction isn't that all a mass of islands that you can sail around; I mean that mass of islands as distinct from the mainland?

A. The only one——

Q. Do you know of any changes in the mainland that have taken place?

A. I don't know of any changes in the mainland.

Q. You don't know of any changes in the contour of the coast in the mainland?

A. Only at Three Mile bayou.

Q. So, then, the nearest place to the mainland that you know of any change——

A. I don't know that it is the nearest place to the mainland, what we call the mainland is the north shore of Mississippi sound.

Q. There is no mainland between Three Mile bayou and the Mississippi river?

A. Well——

Q. If you keep going west you would hit some mainland where you couldn't sail with a boat?

A. Yes sir.

Q. You couldn't sail with a boat from Three Mile bayou down to the Mississippi river, something would stop you in the way of mainland?

A. Yes sir.

Q. That is what I mean by mainland.

A. There are very few places; you can go pretty well through the marsh.

Q. You say go through the marsh, you mean you could sail westward to the Mississippi river without being stopped by the mainland?

A. Not westward; in a southwest direction; it wouldn't be any particular course, no one particular course, because there are so many different courses; no man in the world could ever give it.

Q. The most westward point in which there was a change, was this Three Mile bayou, that is the most westward point you know there has been a change?

A. Yes sir.

Q. There has been a change in the last 20 years?

353 A. Yes sir.

Q. Just repeat that, what change there has been at Three Mile bayou?

A. There used to be a point that branched out on the west shore; it is now cut in two, and there is a little island outside, there is water between the little island and the main marsh.

Q. That has been formed in the last two years?

A. Yes sir.

Q. That is the most westward point you know there has been a change?

A. Yes sir.

Miss BESSIE MEADE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. GUION:

Q. Where do you live?

A. No. 2622 Canal street.

Q. Have you ever seen this map?

A. Yes sir.

Q. Of which this is a photo print, marked map No. 15?

A. Yes sir. I have seen them both.

Q. Was the photo print marked map No. 15, handed to you by any one?

A. What, this?

Q. Yes, that photo print?

A. Yes sir, it was.

Q. By whom?

A. By Mr. Ernest Bellocq.

Q. How many did he give you?

A. Thirty-five.

Q. For what purpose did he give them to you?

A. To be colored, these boundary lines to be colored, to be tinted.

Q. Who did the work?

A. I did the coloring.

Q. Examine that along with the original and state whether it is a correct coloring from the original?

A. Yes sir, that is correct.

Q. Both of those you hold in your hand?

A. Yes sir, those are correct.

Q. Have you ever done this kind of work before?

A. I have done water colors, not on maps though, all kinds of water colors.

Q. On what?

A. Photographs, scenes.

Q. Have you ever done any work here for photographers in the city?

A. I am doing all the work for the Moore studio, now, at Lee circle.

Q. You are doing all their work?

A. Yes, sir, all the coloring work.

Q. Is that a studio of any consequence here in the city?

A. It is considered a first class studio in the city.

Q. You state that those two maps, photo prints rather, that you have just had in your hand are colored correctly from the original that you now have in your hand?

A. Yes, sir, perfectly correct.

No cross examination.

Mr. DYMOND: In connection with the testimony of the witness we offer in evidence now, map No. 15, being photo print of the original map concerning which, evidence has already been offered, and tenders the same to be offered in evidence and also tenders to counsel for the State of Mississippi a duplicate of the photo print.

354 Capt. J. D. RAILEY, witness sworn and examined on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND :

Q. Where do you reside ?

A. I reside in Biloxi in the State of Mississippi.

Q. By whom are you at present employed ?

A. Lopez, Dukate and Company.

Q. Where are you at present occupied ?

A. At Three Mile bayou.

Q. Where is this Three Mile bayou ?

A. Out here in the marsh, south of Cat island, to the south south, southwest of Cat island.

Q. What is your employment there ?

A. Buying oysters for the Louisiana Oyster Company.

Q. Where is the Louisiana Oyster Company Limited, located ?

A. It is stationed near the Rigolets.

Q. Where are the Rigolets ?

A. In Louisiana, I suppose. They are west of Pearl river.

Q. How old a man are you ?

A. I am 56 years old, the 20th of last September.

Q. Have you ever had any experience in the oyster business, fishing oysters ?

A. A little bit.

Q. How long ?

A. Since 1869.

Q. Have you been, since 1869, fishing oysters in the Louisiana marshes ?

A. Yes sir ; not altogether in the Louisiana marshes, I have fished there ; I commenced fishing in the Louisiana marsh in 1869.

Q. Had you ever been in the Louisiana marshes before that ?

A. Yes sir.

Q. When was the first time that you were in the Louisiana marshes ?

A. The first was January 6th, 1869.

Q. Did you, at that time, have occasion to visit Three Mile bayou in the Louisiana marsh ?

A. I passed through it.

Q. How wide was Three Mile bayou at the time you passed through it, on your first trip ?

A. I should judge the mouth to have been 100 feet wide, as near as I can remember.

Q. How wide is Three Mile bayou today ?

A. It is about three times the distance, all of three times, if not more.

Q. In your fishing of oysters did you have occasion to visit at other points in the Louisiana marshes ?

A. Oh, yes; I have been in a good many portions of the marsh.

Q. When were these trips made, about what year, these first trips of yours?

A. When I was first down in the Louisiana marshes, I did not go down there oyster fishing, in 1869, I went hunting for a wrecked vessel, I never went fishing for oysters in the Louisiana marshes until 1889.

Q. Did you have occasion to pass through the Louisiana marshes in hunting for this wrecked vessel?

A. Yes sir.

Q. Which direction did you go?

A. We struck the marsh at Three Mile bayou and went up to what we call Bay Bodreaux, from thence down to what we call Dutchman's pass, in through Scow pass and out through a place that we call Live Oak bay near Morgan harbor.

Q. Is that down near the mouth of Bayou Terre Beuf or Point Fortuna?

A. No; it is just—you leave Bay Tresor to the southward and go through a pass about a mile and a half north—

Q. Bay Tresor is what figures on the map as Treasure bay?

A. Yes sir.

Q. When you next visited that section and were engaged
355 in fishing oysters, did you have occasion to pass anywhere near the same route that you took on your first trip?

A. Yes sir, I have been through there a good deal.

Q. How many years elapsed between your first trip and your second trip?

A. Let us see, it was somewhere in the neighborhood of 19 or 20 years.

Q. Did you notice any changes to have occurred in that interval of time?

A. Yes sir; there were several changes that occurred during that time, that is, in the location of the ground, you know, the marsh.

Q. What were those changes?

A. Washings out caused from high water.

Q. Were they of any extent?

A. Some of them, yes.

Q. Can you mention in any locality where you noticed any perceptible change from your first visit?

A. Yes sir; for instance, at what we call Point Comfort at the mouth of Morgan harbor; that point, I suppose is 200 yards shorter in a southwest and northeast direction than what it was when I first was there.

Q. Did you notice any other change besides this one at Point Comfort?

A. Yes sir, as I started east I noticed a change at Martin island.

Q. What change did you notice there?

A. I noticed the island was cut in two near the southeast end of

it making another pass that was not there the first time I went to that coast.

Q. Did you notice any other changes besides those you have mentioned?

A. I noticed several cuts along. Now, for instance, Creole gap is changing the first time I was there.

Q. When the first time you visited Creole gap?

A. At the same time I went through Three Mile bayou.

Q. How wide was Creole gap at that time?

A. There was no gap there.

Q. What was it?

A. It was just a bend in the marsh.

Q. It had not branched through at all then?

A. No sir. There was no gap at all. Just to the southward of that is what we call Bayou Pierre, that went through; this Creole gap was what we called a lagoon, a bend in the marsh, but it was not cut through, you could not go through to the southward of the marsh at all; but now, it is possibly from 250 to 300 yards wide, it is a pass about that wide.

Q. And that has occurred within your knowledge?

A. Yes sir.

By Judge GUION:

Q. What is the length of that pass that has been cut through there?

A. The distance that is cut by nature, since I first knew it, I should judge to be about 100 to 200 yards in length.

Q. And about how wide?

A. From 250 to 300 yards wide.

Q. And when you first knew it, you say it was just a border of the marsh?

A. Yes sir.

Q. With no passage way at all?

A. No sir.

Cross-examination.

By Mr. TAYLOR:

Q. You saw simply a pass cut out from the lagoon into the bay?

A. Yes sir.

By Mr. DYMOND:

Q. The lagoon, however, did not extend through the island?

A. No sir.

By Judge GUION:

Q. What was the width between the lagoon and the main body of water east?

356 A. Somewhere in the neighborhood of 80 to 100 feet.

Q. That was marsh?

A. Yes sir.

By Mr. DYMOND:

Q. So far as you know has there been any erosion or washing away of the general shore line between Petite pass and Isle a Pitre?

A. Well, yes, there has been a little at Petite pass. Now, at Isle a Pitre, what originally was Isle a Pitre, a portion of it was washed away, the northeast end of Isle a Pitre, in my knowledge, a portion of it is washed away.

Q. Has there been any change in Nine Mile bayou?

A. That I can't say. I don't know anything about Nine Mile bayou, only at a distance, I was never in it in my life.

Q. Had there been any changes down on the inside of the marsh within your recollection?

A. Yes sir, there have been a few changes along the islands inside the marsh.

Q. What has been the general tendency of the change?

A. Washing it away, washing away the points by the deep water coming through the marsh land. You see the water down there in those deep places, it is narrow and makes a strong current.

Q. Have the storms had any effect on the general topography or appearance of the country down there?

A. Yes sir, considerable.

Q. What effect have the storms had?

A. By changing the shape of places, washing it away in portions.

Q. Has there been any building up in the country there?

A. There has been no building up that I know of; the only place that I know of any building up is a little place on the ridge, going up, the same part I was speaking about, along Otter bayou, caused from the drift that would accumulate there, that is a high ridge.

Q. Do I understand you to say then, that the general tendency has been one of washing away?

A. Yes sir, in there, yes sir, washing away along those deep cuts.

Q. Is the territory that you have been talking about, that which is ordinarily called the Louisiana marshes?

A. Yes sir. That is the territory I am talking about. The territory that you are having a dispute about.

Q. Do you know of an island that was called Round island that was just north of Petite pass, Petite Pass island?

A. Yes sir.

Q. Is that island observable above water, today?

A. Well, yes, with the exception of very high tide, it is; very high tide it is under water, but ordinary tide there is a short key there now.

Q. What change, if any, has occurred in that island?

A. It is very near completely washed away with the except a small ridge of white shells.

Q. How about St. Joseph island?

A. Half Moon island I suppose you mean?

Q. I mean where St. Jo light used to be.

A. That is washed away, there is nothing there at all, it is under water altogether and has been for years, that island has

Q. Are there any other islands that you know of that have washed away outside of those you have spoken of?

A. No sir; I don't know any that have been washed away together, that have disappeared altogether; that little key, Re island, is the only one that is washed away, and you can see ordinary water, now, at low tide, but in high tide it is completely covered, it is nothing but a small shell key

Q. Is there a well defined coast line extending from Petite pass Isle a Pitre, on the north shore of the Louisiana marshes extending where it is cut by Nine Mile bayou, Three Mile bayou, Tur bayou, Johnson bayou and these other bayous?

A. Yes sir, there is a line all the way down with the except it has been cut in two, away down into the bay.

Q. All the way down to where?

A. From Isle a Pitre down to Petite pass, and it continues still all around to Ship Island canal.

Q. Did you have to pass through one of these passes, bayous to get down into the interior?

A. Yes sir, you can't get into it any other way.

Q. Is that shore line all above water except where these bayous enter into the interior?

A. Except in high storms; ordinarily it is high above the water.

By Mr. ZACHARIE:

Q. You say you visited this territory, these Louisiana marshes first in 1869?

A. Yes sir.

Q. How did you traverse the marsh, how did you go over it?

A. By water, by schooner.

Q. By water entirely?

A. Yes sir.

Q. Did you pass over any of this ground on foot?

A. No sir, only when I got on shore may be to run after a coon; I was too afraid of snakes.

Q. You say you next visited this territory about 1880?

A. 1889.

Q. Did you follow about the same route that you did in 1869?

A. I followed it just the same as well as I can remember, because that was the only route I knew.

Q. In so far as being marsh or being cut up into little islands or lagoons, what difference, if any, did you find between your two visits?

A. Well, I found considerable difference, as I told you, there were cuts made larger, there was, for instance, the cut from Drum bay into Sand pass was a very small place, the marsh was broken up a little, it is much more cut up today to what it was when I first went through there, in some places, in some others it has not changed a particle.

Q. Have you been in that neighborhood during any of these great storms?

A. Yes sir; I was there in the same storm that Mr. Summerall was telling you about.

Q. What year was that in.

A. In 1893. But it was in November that I saw it.

Q. You were out there in November?

A. I wasn't out in the October storm.

Q. Can you describe to us, briefly, what you saw in regard to the inundation or the effect of the waters upon these Louisiana marshes?

A. When the water was highest you couldn't see anything because it was too dark, it was in the night time, but the marsh was completely covered, there was nothing to be seen, it looked like one vast sea; then when the wind shifted and came out from the southeast it cut the islands away considerably.

Q. From what point of the compass did that storm first come?

A. It swung from the northeast to southeast, or from about east northeast.

Q. Could you have any idea of the depth of the water which covered these marshes?

A. Well, I could in one sense of the word; when the tide rose that night at half past ten, I measured the water where we were lying and there was $11\frac{1}{2}$ feet of water there, and before morning there was four feet and one half of water, so it would be very easy to see how much rise there was.

Q. Can you tell us anything of the manner in which these waters swept over this marsh?

A. Well, it swept over the marsh with a tremendous force; in fact, it turned out with a great deal more force than it came in; it would take and dig out holes in places.

Q. Were there waves caused by—

A. Not much on the inside of the marsh, the force of the water was broken; but on the outside it swept with a clean sweep, it had a clean sweep, there was nothing in the way to break the force of the water; there were places in that marsh where the grass is from three to five six feet high, so of course that broke the force of the water inside the marsh.

338 Q. Can you form an idea of how high these waves broke over?

A. Yes sir, in some places they ran as high as eight feet.

Q. Was that the only storm you were out in?

A. Yes sir, that was the only storm I was out in that marsh.

Q. That was the November storm?

A. That was the last blow after the October storm, somewhere along between the 3rd and 7th of November.

Q. Do you remember if prior to the storm of November 7th, you noticed any of the effects of the storm of the preceding October?

A. Yes sir; that cut through Martin's island, that was done in the October storm.

Q. Did you notice any other effects upon this territory produced by the October storm?

A. The place we call Elephant pass we made a little larger too, washed out some.

Q. Captain, how high ordinarily are these marshes above the level of the sea?

A. You mean the land or the grass?

Q. The land?

A. Well, as a general thing, on an average it is not more than, well I would say, not exceeding 14 or 15 inches, some places it is three feet, and some places it is level with the water.

Q. Do you know the character of this soil?

A. It is soft sticky mud.

Q. Is it clay or fibrous material or is it made from vegetation?

A. It is not made from vegetation, the foundation of it; of course there are places, but it is a black mud, more like pipe clay only it is black and yellow.

Q. Is it a solid or spongy soil?

A. It is solid.—None of it is solid on account it is undermined with all kinds of fiddlers, what we call fiddlers and things working in the ground, crawfish, it is all cut up, none of it solid, it springs when you walk on it along the edge of the marsh there.

Q. Where this grass is, is the the soil very deep or is it a crust?

A. I don't know; I never took it up.

Q. Did you ever attempt or try to drive a pole down?

A. Yes sir, I have stuck poles down.

Q. How deep would these poles go with the weight of a man's body?

A. In some places you couldn't get them through at all and other places I don't know how far they would go, I have driven them 10 or 11 feet down in the mud myself and other places they wouldn't go so far; some places you couldn't get them down at all; you would strike shells.

Q. What name does this territory go by amongst the Mississippi fishermen? What do they call it?

A. They call it the Louisiana marshes as far as I know.

Q. Do you know or not, how long these Mississippi fishermen have been getting oysters from this territory?

A. I don't know how long they have been; all I know from 1889, that was my first work for the Biloxi company, I came to Biloxi in 1889.

Q. You fished from what point to what point?

A. I fished all the way from Isle à Pitre to the northeast end of the marsh down, you might say to American bay.

Q. Is that in the parish of Plaquemine?

A. I don't know anything more about the parish than the man in the moon.

Q. Is that south of Point La Fortuna?

A. Yes sir, it is south by west of that point.

Q. You say you can't tell when these Mississippians first came over there?

A. No sir.

Q. What is the reason, if you know, why these Mississippians came over into these marshes to fish for oysters?

A. For two reasons, one was that oysters were plentiful over there, and the other was it was a good harbor to work in; out in the bay there it is very rough and a man would have to get out of his bed in the night time to get into a harbor and in there they wouldn't have to do that, that was a very safe harbor.

359 Q. Have you fishes oysters along the Mississippi coast?

A. Yes sir.

Q. Are they rare or plentiful, the oyster reefs?

A. There are a good many reefs along the Mississippi coast.

Q. Then you think the main reason, why these Mississippians came over into the Louisiana marshes, was they found safer anchor-age there?

A. Yes sir; they could work there when they couldn't work outside.

Cross-examination.

By Mr. TAYLOR:

Q. Do you know Nine Mile bayou?

A. No sir.

Q. You have never been to Nine Mile bayou?

A. No sir.

Q. Do you know what the name means? What is meant by Nine Mile bayou?

A. That even I couldn't tell you, what the name of Three Mile bayou or Nine Mile bayou means.

Q. You say Nine Mile bayou is fourteen miles from the Rigolets?

A. All of it; I never measured it.

Q. But you do know Three Mile bayou?

A. Yes sir.

Q. There never was a time when Three Mile bayou was not there; that has always been Three Mile bayou ever since you knew it?

A. Ever since 1869; that was my first trip there; I passed through it then.

Q. You say it has been enlarged some, but Three Mile bayou was there?

A. Yes sir.

Q. Was Turkey bayou there when you first knew it?

A. Yes sir.

Q. You say this Creole gap, that that change there consisted in the lagoon breaking into the main water?

A. Yes sir.

Q. The lagoon was always there?

A. Yes sir.

Q. Did you ever sail through Three Mile bayou down around Little Ragoon island in that water around there?

A. Yes sir.

Q. Ever go down into False Mouth bay?

A. Yes sir.

Q. And then down into Treasure bay south of that?

A. Yes sir.

Q. And then into the water what they call Indian Mound bay?

A. Yes sir.

Q. And then up into the waters of Karako bay?

A. Yes sir.

Q. When you take those altogether, the water around Raccoon island and False Mouth bay and Turkey bayou and Indian Mound bay, isn't that a large body of water?

A. Yes sir.

Q. Dotted with islands here and there?

A. Yes sir.

Q. How many miles, can you measure it in miles, how far do you suppose it would be in miles from where you came from, Three Mile bayou down to the end of Treasure bay for instance?

Q. I should judge it to be about seven miles south by west course, south by half west, if you go a straight line.

Q. In a southerly direction?

A. Yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. Captain, about the course which Mr. Taylor has just cross examined you on, what is the depth of water going through around Raccoon island, through Treasure bay, then through False Mouth bay, down towards Indian Mound bay and then back?

360 A. There is one name in there you have got me on, and I can't answer it until you make an explanation, that False Mouth, that name I don't know anything about.

Q. What name do you know it by?

A. We call that Pirate's cove.

Q. Do you, or not, know, that in portions of the route which you have spoken of, that in some places there is not more than 18 inches of water?

A. Not going down that way, from Three Mile bayou here, down here to Bay Tresor there is never less than two feet and a half from

there to four feet, in very low tide there is two feet and a half and in high tide there is four feet and a half.

Q. What would you say if I were to say I have been over there when an 18 inch draft launch would drag in the mud?

A. It is very easy to do that, I can do that myself any time, if a man keeps out of the channel.

Recross-examination.

By Mr. TAYLOR:

Q. Suppose you were sailing down through Three Mile bayou around what you call Pirate's cove, Turkey bayou and Indian Mound bay and West Karako bay, just sailing around that body of interior waters, dotted with islands, has there been any material change in that body of water since you have known it, taking it as a whole?

A. Some few.

Q. Some few changes, but I mean taking it in a large way, as a whole?

A. Only those cuts there.

Q. With the exception of those changes, in the cuts you have mentioned, it has always been just as it is now?

A. With the exception of those cuts there.

Q. The general body has been just the same as it is now, since you first knew it?

A. Yes sir, about the same.

CHARLES SANGER, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. Bay St. Louis.

Q. Is that in the State of Mississippi?

A. Yes sir.

Q. What is your business?

A. Contractor.

Q. Of what sort?

A. Building contractor.

Q. Have you ever had occasion to visit the Louisiana marshes?

A. Yes sir.

Q. How old a man are you?

A. Fifty one.

Q. When was the first time you had occasion to visit the Louisiana marshes?

A. About ten years ago, in the interior; on the outside I have been there about twenty years.

Q. On the outside, you mean the coast?

A. Yes sir.

Q. Do you mean the coast extending from Petite pass to Isle à Pitre?

A. From Grand Pass to Isle à Pitre on the north and east side of Isle à Pitre.

Q. In the twenty years that you have been acquainted
361 with the north shore of the Louisiana marshes and the Isle à Pitre, have there been any changes occurring there to your knowledge in the general topography and shape of the country and if so what?

A. Yes sir. I noticed there is one shell bank that used to be at Isle à Pitre that has entirely washed away.

Q. Do you know whether there have been any other changes; in Creole gap for instance?

A. I don't know about that positively.

Q. How about Grand pass?

A. I don't know that either; but I know the outside coast, you can see has washed away, going by there, by walking along the shore every two or three months I could see the coast has changed.

Q. What shore are you talking about now?

A. That is the north shore.

Q. Of what?

A. Isle à Pitre, that is the shore nearest the main land of the State of Mississippi, the north shore of Mississippi sound. That is exposed to the north wind, to every north wind that comes along there, the sea drives the waves up against the bank and washes it away.

Q. Those are the waters of Mississippi sound.

A. Yes sir.

Q. Is that same influence and effect of the water shown on the shore line west of Isle à Pitre?

A. I suppose all the way along, because it is all exposed to the north winds.

Q. In the past ten years you have been acquainted with the interior of the Louisiana marshes, have there been any changes down there?

A. Yes sir.

Q. What changes, if any, have you noticed in the washing away of the shore on the inside.

A. I have got a place near what they call Turkey bayou and six years ago I planted piling in there and the piling was planted close to the shore, it was planted four feet from the shore, and you can go down there now and find it ten feet from the shore.

Q. So that in six years it has moved back six feet?

A. About six feet.

Q. Do you know of any other changes down there in the interior?

A. No sir, except at certain points; we have got certain points

where we planted stakes, in the course of three or four years we found the stakes in the water.

Q. Does that mean that somebody has moved the stakes or that the land has washed away?

A. The land washes away.

By Mr. ZACHARIE:

Q. Were you acquainted with this territory, the interior, prior to 1893?

A. No sir.

Q. Then you don't know anything about any changes or effects produced by the storm of '93?

A. No sir.

Q. Have you had occasion to examine the maps of the Land Office in regard to sections in that territory?

A. Yes sir.

Mr. TAYLOR: I object to any question assuming the existence of such records or the contents of them on the ground that the records themselves are the best evidence.

Q. Have you, from your personal observation discovered lands figured there where there are no longer land?

A. I don't understand your question.

Q. Are there any sections which you have noted figured there that are no longer land?

A. Yes sir.

Q. What is it?

362 A. There is what we call section 16, that is given on the map as containing about 20 acres, and it has entirely disappeared.

Q. Where is it?

A. At the mouth of Turkey bayou.

Q. What is there now?

A. Water.

Q. Do you know anything about section 30?

A. I couldn't tell unless I looked on the map and have it located.

Q. Will you please look at this certified copy of township—

Mr. DYMOND: Counsel for the State of Louisiana now offers and produces for the purpose of filing in evidence, a certified copy of township 11, south range 19 east, southeastern district of Louisiana east of the Mississippi river from the Department of the Interior, General Land Office, Washington, D. C., certified as correct by the acting Commissioner under date of March 8th, 1904, now for identification to be marked Document No. 7, and tenders to counsel for the State of Mississippi a copy of said township plat.

Mr. TAYLOR: Counsel for the State of Mississippi object to the introduction of such map as irrelevant, immaterial and inadmissible.

Q. Will you please examine the township plat of township 11 south range 19 east of the southeastern district of Louisiana east of the Mississippi river and state what you know about section 16 which figures on that plat?

A. As far as I can say what is marked on here as section 16 is entirely gone, it is not there any more.

Q. When did you make that discovery?

A. According to the location of the place.

Q. When?

A. Since 1888. Even what is called section 21, I think that is the right number on the map, section 21, this entire part here, what is west of this lagoon, that is gone, that is all an open lake, it is all one water now.

Q. What is all one water?

A. This lagoon here, this lagoon is all open here.

A. What has become of section 20?

A. I suppose that is gone entirely.

By Mr. TAYLOR:

Q. What do you mean by saying you suppose?

A. Because I don't think it is there, all of that land, that whole land between that lagoon and the gulf of Mexico is gone.

By Mr. DYMOND:

Q. You—that land you refer to now, is that in the southwestern quarter of section 21?

A. Yes sir, this point right here.

Q. I know, this point right here is what part of that section?

A. That is the southwest quarter of section 21, and very probably the whole section, what is left, is gone with it, because all that has disappeared, that is, it is not there.

By Mr. TAYLOR:

Q. Do you know it was ever there?

A. No sir.

Q. You never saw it there?

A. No sir.

363 By Mr. ZACHARIE:

Q. Do you know anything about that portion of section 30 on that township plat?

A. No sir, that is beyond my limit.

Q. Do you know of any other changes in the topography of this territory as figured on this plat there that has changed from what is delineated on this plat?

A. This part is washed away here.

Q. What are you speaking of now?

A. Section 15.

Q. How much of that is washed away?

A. That entire spot in between this lagoon and the gulf of Mexico.

Q. That is the lagoon that comes out of Johnson's bayou?

A. Yes sir, that is open to the Gulf, all this is washed away from here making one continuous line cutting off the lagoon there opening at the lagoon.

Q. You mean, starting from Jones bayou at the point marked N. 39 east 440, just describe how the line runs?

A. The line runs from Little Jones bayou in about a straight line to the mouth of Jones bayou.

Q. You mean some distance down there?

A. To Jones lake.

Q. What we call Turkey bayou?

A. This is all gone away from there, this is open.

Q. What have you to say about this point?

A. That point is gone, in fact, as near as I can say it is right here.

Q. How far down in that mouth of Jones bayou has the land washed away?

A. I am not positive about that, I can't tell exactly.

Q. Can you state about?

A. I suppose it has washed away from what is shown on the map there — quarter of a mile.

Q. And that continues you say until it comes down to the other mouth of Jones bayou?

A. Yes sir.

Q. Do you know of any other changes that have been produced in that topography as delineated on this plat?

A. No sir. Of course I don't know how it was in the early part of '98.

Q. Then you had better go back and correct your former date because you said '88?

By Mr. DYMOND:

Q. Did you intend to say a moment ago that you had used the word 1888, the date was 1888?

A. On what occasion?

Q. In your testimony a few minutes ago?

A. That I made this discovery about these changes?

Q. Yes?

A. That was 1898.

Q. Therefore if you made use of the date 1888, you intended to say 1898?

A. Yes sir.

Cross-examination.

By Mr. TAYLOR:

Q. This map says upon its face that it is a record of a survey made in the winter and spring of 1844 and 1845; did you know anything about this country in 1844 and 1845?

A. No sir.

Q. Do you know whether there was any land there at section 15 and 16?

A. No sir.

Q. Can you undertake to say that in 1844 and 1845 this land was not all washed away just as it is today?

364 A. No sir.

Q. You don't know anything about that?

A. No sir.

Q. You don't know that there was ever any land at these places, where you say it is washed away?

A. I couldn't say when it was there.

Q. You never saw it there?

A. No sir.

Q. Ever since you knew it, it has been just as it looks now?

A. Not quite.

Q. How much change has there been?

A. I suppose since I took notice there has been a change of eight to ten feet.

Q. So with that exception, so far as you know, the general aspect of the land here has always been just as it is now, so far as you know?

A. As far as I know personally.

Q. You can't swear there was ever any land at these places?

A. No sir.

Q. Have you ever been to Nine Mile bayou?

A. Yes sir, I passed through there once, but I am not a sailor.

Q. Have you ever been through Three Mile bayou?

A. Yes sir.

Q. Suppose you were sailing down through Three Mile bayou and around here; you can just follow this to understand my question; through Three Mile bayou—do you know where Nine Mile bayou is—for instance, you had a boat sailing—

A. I don't know anything about the interior.

Q. You have never — down to Drum bay?

A. No sir; I have only been there once but I never took any notice of it.

Q. Ever sailed through these interior waters?

A. Once.

Q. Once?

A. At Treasure bay I know we went through there in ordinary tide.

Q. Show me your course, how you travelled, where you went into it and where you went out that one time? Where did you go in, through what?

A. We went in through Nine Mile bayou, then we went through—

Q. Bay Bodreaux, then into Treasure bay, then where did you go?

A. I think somewhere up in here, that is where we stopped.

By Mr. ZACHARIE :

Q. Do you mean to say you went into the Lake of the Mound ?

A. Somewheres up in here.

Q. Somewheres near Lake of the Mound ?

A. Yes sir.

By Mr. TAYLOR :

Q. And stopped ?

A. Yes sir.

Q. Did you go out there with your boat ?

A. Yes sir.

Q. Did you come out the same route ?

A. Yes sir.

Q. In that way you got a look of these interior waters, at one time ?

A. Yes sir.

Q. Has there been any change in the general aspect of these interior waters ?

A. I don't know anything about them, I have never been in there but once.

Q. So far as you know there has been no change in those interior waters since you have known them ?

A. No sir.

Redirect examination.

By Mr. DYMOND :

Q. Did I understand you to say that so far as you know, so far as you have been in there that you know that there has been no
365 change, or that you don't know anything about it, so far as this interior is concerned ?

A. Yes sir, I know there has been a change since 1898 where I planted piling inside of the bayou and the ground is washed away to the extent of six feet from where it was.

Q. But in regard to the interior points, in connection with Treasure bay ?

A. No sir, I don't know anything about that, I have never been there but once.

By Mr. ZACHARIE :

Q. How did you go on that trip, in what sort of a vessel ?

A. I went in a vessel drawing two feet and a half of water.

Q. What was it, a lugger ?

A. No sir, it was a schooner.

Q. Did you go way down there near Indian Mound in a schooner ?

A. Yes sir.

By Mr. TAYLOR:

Q. You had no trouble in getting through?

A. Yes sir we had some trouble in getting through the mud, plowed up the mud.

Q. But you got through?

A. Yes sir.

At this stage of the proceedings, the hearing was adjourned to the commissioner to be resumed on the 7th day of April at the hour of 10:30 a. m. at the same place.

Resumption of Proceedings.

NEW ORLEANS, April 7, 10:30 a. m., 1904.

Pursuant to adjournment the hearing was this day resumed at the hour of 10:30 a. m. and at the same place.

Present: Frank H. Mortimer, Esq., commissioner,

" Hon. Walter Guion, att'y gen'l of Louisiana

" Mess. John Dymond, Jr., F. C. Zacharie, and Albin Estopinal, Jr., associate counsel for Louisiana.

Hon. William Williams, att'y gen. of Mississippi Hon.

Monroe McClurg, and Hon. Hannis Taylor, associate counsel.

WILLIAM DILLARD, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside.

A. In Gretna, Louisiana.

Q. What is your present occupation?

A. Patrolman and engineer of the Oyster Commission of Louisiana.

Q. What one, of the patrol boats do you operate?

A. I work on the Majestic and the gasoline boat.

Q. What is the name of that boat, that gasoline boat?

A. The Nita.

Q. Is she used in the patrol service of the Oyster Commission of Louisiana.

A. Yes sir.

Q. How long have you been in the employ of the Oyster Commission of Louisiana.

366 A. Since October 1903, I think it was, or 1902, a year and five or six months.

Q. Where did you live prior to going into the employ of the Oyster Commission of Louisiana?

A. I lived at the Rigolets about three months prior to that and before that I was in town in New Orleans here.

Q. How near is the Rigolets to what is commonly called the Louisiana marshes?

A. As near as I can judge it is about 15 or 18 miles, that is, to Three Mile bayou, that is about east southeast from the Rigolets.

Q. How old are you?

A. I am thirty three years old.

Q. What are the Rigolets?

A. They are supposed to be the outlet of Lake Pontchartrain.

Q. With what body of water does it connect Lake Pontchartrain?

A. With Lake Borgne.

Q. How long did you live at the Rigolets?

A. About three months.

Q. Where did you live prior to that?

A. I had been in Texas for four months prior to that, but before that I lived in New Orleans.

Q. Have you had much occasion, prior to your connection with the Oyster Commission of Louisiana, to visit what is commonly called the Louisiana marshes?

A. Yes, sir; I went out in 1897 from Bay St. Louis, I made a trip to Grand Pass island to Bayou Johnson or Turkey bayou it is now known.

Q. Have you had occasion since your connection with the Oyster Commission of Louisiana, to go through what are commonly called the Louisiana marshes?

A. Yes, sir; I have been through there about every day nearly in the last 15 months except when I would be in town here around pay day.

Q. Does your duty as the engineer in charge of the gasoline patrol boat Nita, require you to go frequently through these marshes?

A. In fact we have been going there very near every day; of course some days when we would go to the Rigolets to send in a report we didn't do it, but there was hardly a day passed that we didn't go in the Louisiana marshes.

Q. What is the line that is patrolled by the Louisiana Oyster Commission through its patrol boats the schooner Majestic and the gasoline launch Nita?

A. Well, from Petite pass, we follow the coast line down as far as Grand pass, and from there around down to the southward.

Q. Is that under the neutral ground agreement made by the Mississippi and Louisiana Oyster Commissions?

A. No, sir, that is outside of the neutral ground, inside rather, the neutral ground being between there and the channel.

Q. But I mean, do you patrol that line in accordance with that agreement?

A. Yes, sir.

Q. In your visits to the Louisiana marshes, have you ever had any occasion to notice the topography of the country?

A. Yes, sir; I notice it very much because I am passing there all the time and I naturally, in running the boat I watch the shores to

see what speed we are making, and notice the changes that occur.

Q. Have you noticed any changes in the topography of that coast since you originally became acquainted with it some years ago?

A. Well, yes, in 1897, as I said before, I went to Grand pas; the point on the northern point extended out and formed a harbor from the north wind; now there is no harbor there, at all; before that point it is worn completely away and then in 1898 I made a trip from Pearlington, Mississippi, and saw at that time what was known on the charts as Round island, it was probably twice the length of this room and probably as wide, at that time it was covered with grass, and Dutchman's gap also on the interior of the marsh—

Q. Finish about Round island; what is the present condition of Round island?

A. Its present condition, there is a little shell reef there, 367 out of water in low tide, that we found on the last voyage and—

Q. What experience have you had with Round island?

A. We ran aground there and stayed there four days and nights out and walked around one side of the boat on the shells.

Q. How did that happen?

A. We had a bad steersman, we had a boy steering the boat, and was cook aboard and he was sailing the boat.

Q. Was there anything above water at the time she grounded?

A. No sir; not a thing; there was just simply a stake there, he didn't see the stake and went on it and we stayed there four days, we went way on to it.

Q. Any part of the island observable above water at the time your patrol boat ran aground there?

A. No sir.

Q. What was the condition of the tide at that time?

A. It was very high tide at that date and we didn't have a tide as high as that until I think five days after, instead of four, five days after the tide next morning was so low that where in the evening we were on that reef, the water was probably ten inches deep the next morning, you could walk around dry footed on that reef.

Q. Was the tide low the next morning?

A. Not unusually low, still it was a good deal lower than the tide before when we went on to it.

Q. Is that island shown on the charts of today?

A. It is not shown; you can't see it on the water there; what was shown on the charts and known as Round island; my attention was called to it in 1898 from the fact I saw probably a couple hundred sea gulls on it and I wanted to go ashore being my trip and I couldn't do it.

Q. Do you know anything about the condition of St. Joseph island?

A. No sir; only from hearsay.

Q. Have you, since your connection with the Oyster Commission of Louisiana, has sufficient time elapsed to enable you to know of any changes in the interior of the Louisiana marshes?

A. Well, there have been changes in Nine Mile bayou, what is known as Blind pass, when I first went out with the oyster commission there was only one pass there and now there are two; there is a place probably 40 or 50 feet wide cut through from the pass into Nine Mile bayou, and then at Pirate point, probably a quarter of a mile from the point there is a space cut through there probably 75 or 100 feet wide, that has been done since I went out with the commission's boats.

Q. That is within the last fifteen months?

A. Yes sir, eighteen months probably.

Q. Coming back to your original testimony in regard to the harbor made by a point near—was it Grand pass?

A. Yes sir. Grand pass.

Q. What was the area of land that has disappeared by being washed away in that interval?

A. As near as I can judge, probably 100 to 150 feet, right on the point.

Q. About what width?

A. Probably from the point it probably dropped back 30 or 40 yards, to the best of my recollection.

Q. And that you state was completely washed away?

A. Yes sir.

Q. Now referring again to Round island, what is visible at Round island at ordinary tide, above water?

A. Just a small pile of shells.

Q. How large?

A. Well, now, probably the length of this room.

Q. What would you estimate the length of this room to be?

A. Probably 50 or 60 feet, 75.

Q. About what width?

A. 12 to 18 feet wide.

Q. How does that compare to what it was when you first saw Round island?

A. When I first saw Round island, it was probably 100 or 120 feet, something like that in length, and covered with grass,
368 the grass was probably knee high on it at the time.

Q. How wide was it?

A. Probably 40 or 50 feet wide.

Q. Is there any grass on Round island today?

A. No sir.

Q. Now, Mr. Dillard, have you in your patrol boat ever gone from Petite pass as the western extremity, to Isle à Pitre as the eastern extremity, along the shore line of—

A. I have traveled that distance in a skiff and launch together, but not in the launch separately.

Q. Have you traveled it close enough to notice the general conformation of that line?

A. Yes sir.

Q. Is it a distinct line or not of the shore from Petite pass to Isle a Pitre.

A. It is a shore broken by bayous and passes.

Q. What are the several passes you refer to?

A. First is Blind pass, Three Mile bayou, Bayou Johnson, Turkey bayou, Drum bayou, Grand pass, Bayou Pierre and Creole gap.

Q. You omitted to mention Nine Mile bayou, do you know it by that name?

A. Yes sir; I thought I had mentioned Nine Mile bayou, it is after Blind pass.

By Mr. ZACHARIE:

Q. Have you ever gone or traversed this route down Nine Mile bayou, past Pirate point, passing by Raccoon island and going on down to and in Treasure bay and from there to Indian Mound and the Lake of the Mound?

A. Yes sir; in 1898 I made the trip in a small sloop over that route and stopped in the bayou opposite Indian Mound. Since then I have traveled over that distance with boats.

Q. When was the last time you went?

A. About three or four weeks ago, to the best of my recollection.

Q. What means of transportation did you make use of in making the trip?

A. The last time, with a gasoline launch.

Q. Did you, did you not go a part of the way in a schooner?

A. Yes sir. I went in a schooner part of the way.

Q. How far down did you go in the schooner?

A. I went opposite the mouth of Bayou Mussle.

Q. Why didn't you go further?

A. Because we didn't have enough water for the schooner to go in.

Q. How much water was the schooner drawing?

A. Three feet and a half.

Q. From the schooner where you left her, down there, to Indian Mound, what means of transportation did you have?

A. We went down on the gasoline boat and carried a skiff in tow for fear we might be unable to get to the destination we wanted to arrive at.

Q. Could you give us an idea about the depth of water on this part of the route?

A. From where we left the schooner, it was probably three feet, in some places maybe three feet and a half, until you strike the mouth of Treasure bayou, there you will find plenty water, but

When you strike the bay, you will have probably 18 or 20 inches, in high tide you will have two feet.

Did your schooner up to the place where she stopped, ground there?

No sir; she didn't ground, but she dragged across the mud in several places.

How was it for the remainder of the route, when you were in naphtha or gasoline launch?

We touched bottom quite a number of times, in the running the boat we noticed a slowing down of the speed of the engine indicating a dragging on the mud.

What draft did you say this gasoline launch had?

18 inches.

Are there any other changes, either in the islands adjacent to these Louisiana marshes, or in the Louisiana marshes themselves, which you have noticed, since your first visit there up to this time?

There is quite a difference in the width in what is known as Dutchman's gap and Catfish pass, since I went there in 1898.

What is that difference?

It is probably 50 or 75 feet wider.

That is, Dutchman's gap?

And also Catfish pass.

Have you noticed any difference, and if so state it, in Nine Mile bayou or Three Mile bayou?

In Three Mile bayou, I did not visit that place in 1898 and know nothing about it only that the coast is gradually washing away there by seeing stakes on the shore and then seeing them in water later, probably nine or ten feet back from the shore, in several places.

In regard to Nine Mile bayou, have you noticed any changes if so what were they?

My first trip had with the commission or the first part of the time I worked with them there was only one pass from Blind pass to Nine Mile bayou and at the present time there are two, one to the west of the other, probably 50 or 75 feet wide.

Can you state about what the depth of water in this new pass is?

I have never been through there; I couldn't say.

Have there been any changes, and if so, state what changes, in the mouth of Nine Mile bayou?

In the mouth of Nine Mile bayou I don't know, I never paid attention to the changes there, I don't go through there very often, but Blind pass is considerable wider than in 1898.

In regard to Turkey bayou or Johnson bayou, have you noticed any changes there, and if so, what are they?

I never noticed any there.

Have you noticed any changes in regard to Creole gap?

A. We have not visited that section enough to notice any changes, I have not.

Q. Have you noticed any changes in regard to Grand pass?

A. The one I stated, the point being washed away.

Q. Have you visited Isle à Pitre as far as its most eastern extremity?

A. Within a very short distance, probably a quarter of a mile.

Q. Have you noticed there any changes since you have been working for the commission?

A. Well, I can't say that I have noticed any changes there for we have been so busy inside the marshes we had not time to be around that point very much.

Q. What is the nature of the soil along this northern coast of these Louisiana marshes?

A. Well, I am not an expert enough to tell you what it is, but it appears to me to be a mixture of clay and sand rather black in color.

Q. Is there any evidence of any vegetable remains in that grass or fibrous material of any kind, if so what?

A. That I don't know, it is grass growing there all the time and some few small—I don't know whether you would call them trees, around there, bushes, probably all the way from five to eight feet high ten feet high in places.

Q. What is the nature of this soil, is it soft or hard or porous?

A. In some places it is soft where it is a little low, but in others it is hard enough for a good sized horse or mule to walk over it without bogging over his ankles.

Q. Have you ever endeavored at any points along here, by your own weight to press a pole into the soil, and if so state what you saw or experienced?

A. Well, in some places I have tried, but very few, in some places I could push a pole probably ten feet, others I could not get more than a foot or a half or eighteen inches down.

Q. You say a pole; how did you attempt or try to get this pole down this eight or ten feet?

A. By working on it, putting my weight on it, moving it.

Q. Now, in these Louisiana marshes have you observed any trees, if so, state what trees if any, and about their dimensions and at what places you have seen them?

370 A. In 1898 on my first trip through the Louisiana marshes, in Nine Mile bayou, I saw one or two small oak trees on the left side going through, and another on Mud Grass island about the center.

Q. Going through what?

A. Going through the bayou.

Q. Which bayou?

A. Nine Mile bayou, near the south mouth of the bayou.

Q. How many trees did you see?

A. At that time, two or three, I don't remember exactly which, but there — two or three trees there.

Q. You say they were oak trees?

A. Yes sir. They have since been dug up by treasure hunters.

Q. You have said they were small trees; can you give us an idea of the height or diameter of the trunks—

A. One of them was probably 12 or 15 feet in height, to the best of my recollection, and between three—between four and six inches at the butt, at the base.

Q. You say these trees have disappeared?

A. Yes, sir, they have been dug up by treasure hunters.

Q. Did you observe any other trees at any other points, if so, where?

A. About the center of Mud Grass island, in 1898, was an oak tree that was during the summer months or winter—

Q. Which is it, summer or winter?

A. Winter. I was there in the winter month, I don't remember the month, but it was green at the time, you could see it quite a distance, and today that tree appears to be smaller than it was at that time, owing to the boughs being dead, the limbs being dead.

Q. About what was the height of that tree when you first saw it?

A. Well, it appeared to me to be between 15 and 20 feet high; we could see it from quite a distance.

Q. About what was the diameter of the trunk?

A. I never went to the tree at all, it was in the mud and I had no business there.

Q. How far were you away from the tree when you observed it?

A. Probably four or five miles, the first time I saw it.

Q. When was the last time that you saw it?

A. I think about 15 days ago.

Q. What changes, if any, did you observe in that tree?

A. Well, the tree was smaller in appearance owing to having no foliage on it, no leafing at all, it didn't show up as plainly as when I first saw it.

Q. Have you ever at any time noticed any other trees in these Louisiana marshes?

A. At Indian Mound there is a large oak tree there.

Q. How large a tree is that?

A. I think about from 12 to 15 inches through at the base, as near as I can recollect.

Q. And about how tall, how high?

A. Probably about 20 feet, that is including the branches you know.

Q. What is the condition of that tree and of these other trees which you have seen?

A. They are all dead now.

Q. They are all dead now?

A. Yes sir, from what I have seen of them.

Q. I think you said you first visited these Louisiana marshes in 1898?

A. 1897 was my first trip, from Grand pass to Bayou Johnson and back to Bay St. Louis.

Q. Have you noticed any changes in any of these other islands to the north of these Louisiana marshes, I mean those islands lying between the north of the Louisiana marshes and the Mississippi shore?

A. On Grassy island in 1898 was a small camp, on the edge of the island, and today that camp has been washed away, the island is much smaller than at that time.

Q. About how much smaller?

A. That I couldn't judge; I know the camp was washed away.

Q. Is one quarter of the island washed away?

371 A. Probably so, that is, taking it from all around, to the best of my recollection.

Q. How has it been with Le Petit island off Le Petit pass?

A. About that island I can't say very much; I have only been passing that place in the last fifteen months, and of course I can't say much about that.

Q. Do you know anything about Malheureux point? Do you know that point?

A. Yes sir, I know the point.

Q. Have you noticed any change since you visited that point, if so, state what change?

A. I don't know of any change there because I never paid any attention, I simply visited the point once, working there, putting up a beacon.

Q. Have you noticed any particular change, generally in the shore line, on the north side of these Louisiana marshes, since you have been visiting them?

A. On the north shore?

Q. On the north shore, the coast line of the Louisiana marshes?

A. Only that in some places it has washed away, I know, from seeing stakes on shore and then seeing them lying in the water.

Q. Is this only partial or general along that coast?

A. I couldn't say about being general, because I never paid any attention at the time, I just remember by seeing stakes there and later seeing them in the water, probably two or three feet from shore.

Q. Have you noticed or observed how this washing away occurs?

A. Well, yes, I have thought of that quite often when I would be ashore and see the condition of the soil that had been washed up. The north winds blowing on that shore, it seems to me, that the water working, breaking against that shore, it is undermined or works out the foundation, and then the tide comes in there and just rolls it up on the shore and leaves it there and takes out, washes it back and forth.

Q. Have you ever observed, or not, and if you have, please state,

you have noticed along this coast, portions of this soil which washed back and into the condition it appeared?

A. I have noticed in one or two places, lumps of soil would be torn very near as round as a ball and others would be thrown up by the force of the waves in the condition in which it broke off.

Q. And that, as I understand you, was caused from the undermining of the subsoil?

A. Yes sir, by the heavy north winds.

Q. You have not been out in this territory of the Louisiana marshes, in any of these great storms?

A. No sir; I was in one or two blows, but it was at night and it was not any serious blow, it was no storm.

Q. Can you state in a general way, what is the depth of the water along that northern coast of these Louisiana marshes?

A. From what few soundings I made in going back and forth, it was from 8 to 12 feet at some distance, and about a quarter or half mile from shore there would be seven or nine feet as a rule; in some places shallower.

Q. What is the draft of this schooner *Majestic*?

A. Three feet and a half.

Q. How close, in making her patrol along this coast, can she approach the coast?

A. In some places within a couple of hundred yards and in others within half a mile.

Q. You state that on the last trip that you made in the *Majestic* he went in as far as where? Mud island?

A. On the last trip, the trip that I made to Treasure bay is the last we went in that far with the schooner, as far as Bayou Mussle.

Q. Did you notice, in going that far, or in coming out on the return trip, whether the schooner dragged?

A. It drags every time we go in there.

Q. And you say the schooner drew how many feet?

A. Three feet and a half. If we didn't have a stiff wind we couldn't go there with the schooner, we have to drop it and take the launch.

372 Cross-examination.

By Mr. McCLURG:

Q. Are we correct in understanding that you are testifying purely from personal observation?

A. Yes sir.

Q. And that you do not undertake to be an expert on the subject of these formations, changes?

A. No sir, I don't claim to be an expert, just from personal observation.

Q. And that your information covers only since 1897?

A. Yes sir.

Q. And when you stated your opinion as to the causes of these

changes in the borders of these islands, and passes, that is merely your idea about it without any scientific understanding?

A. From what I have seen, and with the north winds blowing to help.

Q. Is it not true that the east winds are the most destructive as to the shore there?

A. I don't think so, because Cat island breaks the force of the wind, Cat island protects that shore to a certain extent from the east winds; probably north, north east, north west, I don't refer to any particular wind, right to the point it may vary a quarter of a point to anywhere from two to three points, that wouldn't affect it very much, it would be north, north east, north west.

Q. All of this vegetation and trees that you have testified about except perhaps the one on Indian Mound, are what you usually term bushes?

A. No sir; the one on Mud Grass island was an oak tree, from what I could see of it, and from the appearance of the limbs at the present time. I have never been to the tree to examine it, but from what I have seen of it, I have been within a quarter of a mile of it on a small boat.

Q. And you say that from that distance you supposed it was 15 or 20 feet high?

A. The first time I saw it, but at the present time it is not so high owing to the branches being broken off and dead. In fact there is only the body of the tree left.

Q. You looked at the tree a quarter of a mile and told it was an oak tree?

A. I don't claim it was an oak tree, but from the appearance it was an oak tree; I have never been to the tree.

Q. You do not undertake to say it was an oak tree?

A. No sir, not that particular tree; the others I do.

Q. It might have been a tree of more rapid growth than the usual oak tree?

A. It might.

Q. These other trees that you have spoken of; can you testify of your own personal knowledge whether they were trees of rapid or slow growth?

A. It would take a smarter man than I to tell whether a tree was of rapid growth or slow growth, without I was there to watch it and see it grow up.

Q. So you do not undertake to say whether they were trees of rapid or slow growth?

A. No sir.

Q. Now, these bayous along the north coast of the marshes, for instance, Nine Mile bayou and Three Mile bayou, Turkey bayou, Grand pass, and Creole gap, those passes have all been there since your knowledge of that shore?

A. Yes sir.

Q. And I understand you to say that some of them have widened during your observation?

A. Yes sir.

— Washing of the points?

A. Yes sir.

Q. Do you know whether they have deepened or not?

A. That I can't say.

Q. Is it not true that the widening of those passes, does not affect the general depth of the same?

373 A. That I could not say; I never sounded through the passes; I know they have water enough to run a boat and that is all we care about, so we have water enough to run; I never paid any particular attention to the depth of water in any way.

Q. As long as you have got water enough to go on, that is all you want?

A. Yes sir; so we don't get aground and have trouble to get off, that is all I worry about.

Q. In starting out upon these inspections, where did you start from?

A. Generally from Three Mile bayou, according to the water, the schooners lying sometimes at Three Mile bayou and sometimes around Dutchman's gap.

Q. How do you get to them?

A. From the Rigolets we go through in a schooner.

Q. How long are the Rigolets?

A. I think the Rigolets are between five and seven miles long, I never measured it.

Q. Empties into Lake Borgne?

A. Yes sir.

Q. And then you go out of Lake Borgne down through Nine Mile bayou—

A. No sir; we go through from Lake Borgne into the sound and from there into Three Mile bayou.

Q. How far is that east of Nine Mile bayou?

A. Probably three miles or two miles and a half; I never measured the distance and I can't say exactly.

Q. I understood you to answer a while ago that you have been through Le Petit pass?

A. Yes sir; I have been through there probably 50 times in the last 15 or 18 months.

Q. Nine Mile bayou, do you know the depth of that bayou?

A. Only in one place, it is about 30 or 40 feet, in one place, that is all I can tell you about it, I don't know the depth only in that place.

Q. Do you know the depth of False Mouth bayou?

A. In some places there is three and a half and four feet of water, not more than that anywheres else over it, I don't think.

Q. How far is the mouth of the Rigolets west of the mouth of Pearl river?

A. I can't say; I never measured it.

Q. Give us your best judgment.

A. Probably from four to five miles west.

Q. Do you know where Lake Borgne stops and the sound begins?

A. I don't know the exact line.

Q. About the mouth of Pearl river?

A. No sir; I should judge it to be; I should judge it to be on a line between the Rigolets and Petite pass.

Q. Between the mouth of the Rigolets and Petite pass?

A. Petite Pass island.

Q. That line that you draw dividing Lake Borgne and Mississippi sound would be a line a little west of the mouth of Pearl river?

A. Yes sir, it would be west of Pearl river, that is only my supposition, I don't know, I never heard the line discussed there at all and I can't say, it is only my supposition if I was saying anything about it, between that and the outside water.

Q. Do you know anything about the depth of Lake Borgne from the mouth of Pearl river to Petite pass?

A. No sir; I never sounded Lake Borgne.

Q. How wide is Lake Borgne in its widest part?

A. I don't know; I have never been across it.

Q. How far is it from Three Mile bayou to the mouth of Pearl river?

A. I don't know; I have only travelled that distance once or twice.

Q. How far is it from Three Mile bayou to the Mississippi shore, due north?

A. I couldn't tell you that, I made the trip once or twice but never paid any attention to it.

Q. How far is it from Turkey bayou to the Mississippi shore, do you know?

A. I couldn't tell you that; that is out of my line; I can give you guess work but that wouldn't answer.

Q. Do you know how deep Three Mile bayou is, the channel leading from the sound into Three Mile bayou?

374 No sir; I do not; I never sounded it there. I didn't have a sounding pole to reach bottom.

Q. It is a fact that is a deep channel?

A. I know it is over ten feet.

Q. Do you not say the same about Turkey bayou, as to its depth?

A. I don't know the depth of Turkey bayou; I know after you get in the mouth 100 yards there is a mud flat that you can't go over with a skiff hardly.

Q. How about Grand pass?

A. All I know there is at least eight feet through the channel, eight to ten feet, maybe more, I don't know how much more.

Q. Is it not true, from your observations of these changes, in the conformation of those islands, that where the dirt and sand disap-

pears from one point it shows up in a neighboring point somewhere.

A. No ; I have seen it washed away from one spot, and drop in and then be thrown up right there and then it would roll back again ; now what became of it after that I don't know.

Q. Are the conditions the same down in Drum bay and California bay and Live Oak bay and those points as there are in False Mouth bay and Little Raccoon ?

A. In some places the water is deeper and others not half as deep ; in some places in Drum bay a boat drawing 15 inches would go aground and in some places I know it is four and five feet because I have been through there with a schooner and sounded.

Q. In some sort of craft you can travel all over that territory ?

A. In a boat of light draft you can ; not all over it either, because in some places you can't go with a boat drawing 12 inches, some places for a mile you can't go with a boat drawing 12 inches of water.

Q. Are there any of these islands east of the main land of Saint Bernard parish inhabited or cultivated ?

A. I don't think there is, not that I know of.

Q. You are familiar in a general way with all of that section ?

A. That is right in that immediate neighborhood, right around in Saint Bernard parish.

Q. Say from Nine Mile bayou—

A. No ; there are none of those islands inhabited.

Q. East of Nine Mile bayou ?

A. There are two camps on the shore there, but they are people living there taking care of oyster grounds.

Q. You don't know of any permanent houses ?

A. Yes sir ; there is one house that has been there for the last six years.

Q. That is a camp ?

A. It is a good substantial house ; of course it is raised so as to be off the ground.

Q. You don't know whether they till the soil or plant crops ?

A. No sir ; I think the house belongs to Mr. McGraw or Mr. Sanger of Bay St. Louis, I don't know.

Q. That is what you call an oyster camp ?

A. I don't know about an oyster camp ; a man is living there ; it is a two room house with a gallery all around it.

Q. Does he live there all the year round ?

A. Yes sir,

Q. For what purpose ; what is the purpose of his residence there, what does he do ?

A. I don't know what he does, I only know that he is living there, I have seen him there, he might be fishing oysters or watching oysters.

Q. You called it a camp ?

A. Yes sir, or a house either if you want to call it that. I would call it a good comfortable house, if I owned it.

Q. Is there any stock or cattle kept there?

A. No sir; not that I know of; there are chickens and a dog.

Q. Any ducks?

A. I didn't see any tame ducks around there, I saw plenty of wild ones around there and a cat.

By Mr. DYMOND:

375 Q. You have spoken of a camp as suggested by the counsel for the State of Mississippi, have you ever visited this house of Mr. McGraw's on Turkey bayou?

A. Yes sir; I have been there several times.

Q. Do you know of any other habitation?

A. Yes sir; there is one on what is called Doer point.

Q. What sort of a habitation is that?

A. I have never been closer than a quarter of a mile to that house.

Q. What appearance did it give from a distance of a quarter of a mile?

A. It looked like a very comfortable residence for the family living there, a man and his wife and two or three boys living there.

Q. Living there the year round?

A. Yes sir, Mr. Alfred Tancre.

Q. Are there any houses at the mouth of Three Mile bayou?

A. There were two building- there, one was a store, a couple of years ago, store and bar room, gambling house.

Q. Are those buildings still there?

A. Yes sir; they have been there now for the last 18 months and they were there in 1898, in going through Nine Mile bayou I could see the house from where I was.

Q. You were speaking a moment ago about a tree on Indian mound. What character of tree was that?

A. That was oak.

Q. Did you personally inspect that tree?

A. Yes sir; I have been up that tree I reckon three or four times in the last year.

Q. Then you climbed up the tree?

A. Yes sir, to look around the country and see what I could see.

Q. You know an oak tree when you see it?

A. Yes sir.

Q. Was that an oak tree?

A. Yes sir.

Q. Was it dead?

A. Yes sir.

Recross-examination.

By Mr. TAYLOR :

- Q. Any of these houses you speak of, two story houses ?
 A. You might call the one at Turkey bayou a two story house.
 Q. Any of them have brick foundations ?
 A. Not brick ; it was piling, cemented and put in solid.
 Q. Is it not a fact that they were just temporary board structures ?
 A. No sir ; this was not a temporary board structure, it was coiled up inside and fitted with wire screens and fixed up very comfortably inside ; I wouldn't want any better if I owned it.
 Q. Is that the place where the bar room was ?
 A. No sir, that was at Three Mile bayou.

HARRY CAGE, witness sworn and examined on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND :

- Q. Where do you live ?
 A. I am residing in New Orleans at present ; my home is in Terrebonne parish.
 Q. What is your present occupation ?
 A. Chief oyster inspector of the State.
 Q. Of what State ?
 A. State of Louisiana.
 Q. In your occupation as chief inspector of the Oyster Commission of Louisiana, did you have occasion to visit the oyster
 376 territory of Louisiana ?
 A. Yes sir.
 Q. Have you, in your various visits had occasion to go through the Louisiana marshes in the parish of Saint Bernard ?
 A. Yes sir.
 Q. Is there any patrol system being operated under your supervision, of that locality ?
 A. Yes sir, through the entire marsh.
 Q. What is the line, you are now patrolling, as separating that area from the outside fishing of non residents ?
 A. I am patrolling all the main shore line of the marsh.
 Q. What do you mean by the main shore line of the marsh ?
 A. I mean all of the marsh of Saint Bernard parish, with the exception of the marsh and waters around Isle à Pitre.
 Q. Is that line you are patrolling the line designated in the amicable agreement between the Mississippi and Louisiana oyster commissions ?
 A. Yes sir.

Q. Have you had occasion to sail along that line from Petite pass to Isle à Pitre sufficiently close to inspect the line?

A. Yes sir; I have sailed within a quarter of a mile probably.

Q. What is the general appearance of that line from Petite pass to Isle à Pitre?

A. Well, it is a well defined line cut by bayous.

Q. Is it well defined or poorly defined?

A. It is well defined.

Q. What sort of land is it?

A. It is marsh land, sea marsh.

Q. About how far above the level of the sea?

A. I should say about, possibly, 15 or 18 inches above ordinary tide.

Q. Have you ever had occasion to notice any buildings at the mouth of Three Mile bayou?

A. I have noticed buildings there.

Q. How many?

A. Two.

Q. Have you noticed any building at Johnson's bayou or Turkey bayou?

A. I have noticed one building there and have been into it.

Q. Have you ever noticed any building at Doer Point lagoon?

A. No sir; I never noticed that building; I don't know that I have been near enough to Doer point to have noticed the building.

Q. In accordance with the agreement between the two States, is the State of Louisiana, through you, as its chief inspector of its oyster commission, patrolling the area south of the line running from Petite pass to Grand pass?

A. You mean, including embracing what we call the neutral territory?

Q. Yes?

A. Well, our patrol of that, has not amounted to much as we have no boats fishing there.

Q. What do you refer to when you say "patrol of that"?

A. I mean what we call the neutral territory.

Cross-examination.

By Mr. McCLURG:

Q. I will ask you how far it is from Petite pass to the most eastern end of Isle à Pitre?

A. Well, I might as well state to you, in the beginning, that on my trips around the marsh I am always aboard of the patrol schooner and I am not responsible for the navigation and I have others thoroughly competent to navigate, a deputy inspector there, and I have relied so much on him for the navigation that I never have noticed or taken much account of distances.

Q. But it is true, is it not, that between those two points you have noticed only two buildings and they are at Three Mile bayou?

A. Two buildings at Three Mile bayou.

Q. And those are the only houses you remember of having noticed?

A. And one at Turkey or Johnson bayou; Mr. McGraw's house.

377 Q. Those are fishermen buildings, are they not?

A. Well, I do not think either one of them is properly a fisherman building. I understood that the one at Turkey bayou was the property of Mr. McGraw and his associate, while I believe he has a keeper. And one of the buildings at Three Mile bayou I always understood was erected for the purpose of carrying on merchandise business, store and bar room; though I don't know that.

Q. The merchandise business was carried on exclusively with fishermen, out there, was it not?

A. I would imagine so, yes sir.

Q. And there is no habitation or population on those islands for dealing with any merchants, is there?

Q. Well, there is nothing there that you would speak of as a population, no sir.

Q. They are rather supply stations for fishermen and raftsmen passing that way?

A. Well, they are merchants in the regular sense, they take out their State license and carry on regular merchandise business.

Q. What I want to find out is the class of people with whom you deal, transact business?

A. Their business, of necessity, must be very largely with fishermen.

Q. East of the main land, shore of Saint Bernard parish, there is no sort of agricultural pursuits, no habitations of any kind?

A. In the marshes you mean?

Q. Yes?

A. None that I ever saw.

Q. How long have you had observation of that country?

A. Since September 1892.

Q. Of your own knowledge you know nothing about the depth of those waters down there?

A. Nothing accurate, no sir.

By Mr. DYMOND:

Q. Did you mean September 1892 or September 1902?

A. September 1902.

J. M. BREAU, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. I live in Houma, Terrebonne parish.

Q. What is your present official position, if any you have?

A. I am president of the Oyster Commission of Louisiana.

Q. Have you been president of that body since its organization in August 1902?

A. Yes sir.

Q. In your position, as president of the Oyster Commission of Louisiana, have you had occasion to visit the oyster territory of Louisiana?

A. Yes sir.

Q. Have you had occasion to visit the oyster territory in the parish of Saint Bernard?

A. Yes sir.

Q. Were you present, Mr. Breau, at the conference of the oyster commissions of Louisiana and Mississippi which occurred in the city of New Orleans on September 9th, 1902?

A. Yes sir.

Q. Who presided at that meeting?

A. Well, the president of the Oyster Commission of Mississippi presided, Mr. J. A. Hatlestad.

378 Q. At that time, was the Oyster Commission of Louisiana arranging to patrol the waters of the State of Louisiana as interpreted by the Louisiana commission as their territory?

A. Yes sir.

Q. What was the purpose of that conference?

A. Well, the purpose of the conference was to have an agreement with the Oyster Commission of the State of Mississippi in regard to what we considered to be the territory belonging to Louisiana in the parish of Saint Bernard and to see if we could make any—come to any amicable settlement or understanding with the Oyster Commission of Mississippi in regard to instituting a friendly suit with the State of Mississippi to define this disputed line between the State of Mississippi and the State of Louisiana.

Q. Was such an agreement as that necessary?

A. Well, yes, it was.

Q. What made you think it was necessary?

A. Why, because we knew that the fishermen from the State of Mississippi were intruding on the territory of Louisiana, taking her oysters and transporting them into Mississippi.

Q. What was the attitude of the Oyster Commission of Mississippi as expressed on that occasion?

A. Well, the attitude of the Mississippi oyster commission was

they thought they had a right to fish in this territory, part of least.

Was there any expression of what the Mississippi oyster commission's attitude would be in the absence of any amicable agreement?

Well, they—I don't understand you well.

Read the question. (Question read.)

Well, no, not exactly. We had a discussion in regard to the matter and I think that both parties were satisfied pretty soon after that we would come on some agreement consequently—no more than they did say they would, in fact, they could have it by force if necessary.

Who said that?

Well, the president of the board of Mississippi said it.

This gentleman you referred to as Mr. Hatlestad?

Yes sir.

What did he mean by they could have it by force if necessary?

Well, from the expression of the president of the board of Mississippi, he said that if we could not come on an amicable settlement of this affair that he reckoned they could have it by force or by other means.

Was the Louisiana commission then prepared with an armed boat to protect her rights?

Not right then, we were not, we had scarcely organized, no more than organized, but we were preparing to get our patrol boats. That conference terminated, as I understand it, in the adoption of the agreement between the two commissions which has been found in evidence as Document No. 4?

Yes, sir.

As the result of that agreement was there a neutral territory established, in which Mississippi vessels could fish?

Yes sir.

Did that neutral territory include part of the water which was claimed by Louisiana?

Yes sir, a good deal of it.

Has the State of Louisiana, through its oyster commission, any special interest in that area?

Has it any financial interest?

Yes.

Yes sir, it has.

Of any importance or consequence?

Yes sir, of great importance.

Have you ever, on any trip, had occasion to go through the Louisiana marshes?

Yes sir.

Q. How many times have you been through them?

A. I have been there, as far as I can remember, three or four times.

Q. Have you ever sailed along the coast from Petite pass to Isle à Pitre?

A. Yes sir.

Q. Have you ever been close enough to it to notice what the general appearance of the coast line was?

A. Yes sir.

Q. What is the general appearance of the coast line there?

A. I think it appears like a very well defined coast line.

Q. Have you ever been down in the interior of the marshes?

A. Part of them, yes sir.

Q. In what boat did you go?

A. In the Majestic.

Q. In sailing through on the inside of the marshes, have you ever noticed whether the boat dragged on the bottom?

A. Yes sir; in several instances, very often.

Q. What is the general condition, does that boat drag or not drag when she is on the inside of the Louisiana marshes there?

A. As a general thing she drags.

Q. Has that question of a suitable boat for the patrol of the interior of the marshes, come up before you for consideration as the president of the oyster commission?

A. Yed sir; on several occasions.

Q. What character of coat would be needed and best suited for the patrol of the interior?

A. It would be a boat that would draw as little water as possible.

Cross-examination.

By Mr. McCLURG:

Q. The Majestic seems to have been a kind of dragger?

A. Well, yes, and any other boat would have been a dragger drawing the same depth of water as the Majestic did.

Q. Did the meeting of the oyster commissions at New Orleans, on September 9th, undertake to settle the boundary dispute between the two States?

A. Well, we did not feel that we had the power to settle the dispute of the boundary line, but we felt that we had a deep interest in this and at our first meeting on the day of the organization of our commission this was one of the principal discussions of the meeting. We came to the conclusion that it was best to place ourselves in communication with the Oyster Commission of the State of Mississippi and try and so arrange it as to have an amicable understanding between the two States with the understanding that we would institute a law suit before the Supreme Court of the United States and demand a settlement of this disputed line between the two States, and we thought by doing so, so did the Oyster Commission of Mississippi, that we would have no hitch in this suit whatever; in other words, it was understood that it would be a friendly suit and that we would

let the court take its own course in the matter so we could have a speedy decision in regard to this disputed line.

Q. That was the question with your commission when it was organized?

A. That was the question with our commission when it organized and also the day we met the Oyster Commission of Mississippi, between the two commissions.

Q. The objective point was to provide for a suit in the United States Supreme Court?

A. A friendly suit, so as to have a speedy decision in regard to the disputed line between the two States.

Q. As a matter of fact, the Oyster Commission of Louisiana understood that they had no authority to settle the boundary line between the two States?

A. Well, yes, I think they all understood that to be a fact, that we had no authority.

Q. And they understood also that the Mississippi commission had no authority to settle the boundary line between the two States?

380 A. Yes sir, that is the way I understood it.

Q. And pursuant to the resolution adopted at the September meeting 1904, this suit was instituted?

A. Yes sir.

Q. Between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi, both understanding that they had no authority in law to make an agreement as to neutral territory that would be binding upon the citizens of the respective States?

A. Well, we took it for granted that we had that right to establish this agreement.

Q. Did you not preside, at a meeting held in this city in November 1902, immediately after the institution of this suit, in which the governor of your State and of the State of Mississippi and the attorneys general of those two States, and the oyster commissions of those two States participated?

A. Yes sir.

Q. Was not that meeting called at the suggestion of the governor of Mississippi?

A. It was—at least it was not called by me at the suggestion of the governor of Mississippi; it was called by me at the suggestion of our governor.

Q. It was requested of your governor by our governor, was it not?

A. I can't say that I am sure of that but I understood it to be so.

Q. What was the purpose, if you remember, of that meeting?

A. As near as I can remember, the purpose of it was in regard to the dissatisfaction of the agreement, that the agreement had created in Mississippi, the agreement between the two commissions.

Q. As to what?

A. As regarded the neutral territory, and Governor Longino then took up the matter with our governor and requested him to advise

with me in regard to having an extra session or a conference with both governors and both commissions.

Q. And that meeting was the result of the dissatisfaction of the people of Mississippi with the agreement that our commission had made with your oyster commission with reference to the neutral territory?

A. That is my understanding, it was.

Q. Do you not remember that at that meeting, the attorney general of Mississippi recommended as the safest, quickest, cheapest and best way to settle this trouble between the certain inhabitants of the two States, was, that the governor of Louisiana recommended to his legislature the appointment of a boundary commission and the governor of Mississippi recommended to his legislature the appointment of a boundary commission?

A. Yes sir.

Q. And that those two commissions should meet, settle and mark this boundary; do you remember that proposition having been made?

A. No; the proposition was not made in regard to the two commissions meeting to settle this question.

Q. I say, whether at the meeting of those two commissions this proposition of settlement was not made by the attorney general of Mississippi?

A. Well, there was a proposition somewhat similar to that, but I can't remember it very well now. All I can remember is that Governor Longino, after discussing the matter a while between him and Governor Heard and between the attorney general of Louisiana and the attorney general of Mississippi, they discussed the matter a while and then Mr. Dymond produced a map which would show the governor of Mississippi, Governor Longino, exactly the territory that we had allowed the Mississippi people to use as a neutral territory between the two States, and on looking at the map Governor Longino, he looked over it carelessly, and finally I imagined that I could see in his appearance that it was not satisfactory to him, and right then and there I was asked to excuse the two governors of both States and leave it to the two commissions to settle the question, and owing to the lateness of the hour of the day, we decided to put it off for a few days and have a conference again with the Mississippi commission, which we did, and in our next conference the Oyster Commission of Mississippi told us that they were perfectly satisfied with the first agreement and they saw nothing to kick about and the matter was left just as we decided at first.

Q. Do you remember that I represented Mississippi as her attorney general at that meeting?

A. Yes sir.

Q. Do you not remember that I made the statement suggesting a settlement, substantially as I have asked you about in a previous question?

A. You made some remarks of that kind, yes sir, but I don't remember—

Q. Don't you further remember that that proposition was declined by the governor and attorney general of this State in that open meeting?

A. I do not know that they declined the proposition at all. On the contrary, in the discussion the whole matter was turned over to the two commissions, everything was dropped.

Q. By vote of that meeting?

A. No sir, not by a vote of that meeting, but by the proposition of the two governors that they would withdraw and leave the decision in the hands of the two commissions as regarded what Governor Longino was asking of us.

Q. The governors and attorneys general retired?

A. Yes sir.

Q. And left it to the two oyster commissions?

A. Yes sir.

Q. And you say that was at the request of the two governors?

A. Yes sir.

Q. And the two oyster commissions after these officers retired failed to come to any agreement that day?

A. We did not undertake to come to any agreement. It was the mutual understanding that we should meet a few days later.

Q. You did meet a few days later?

A. Yes sir.

Q. At what point?

A. Right there in the office of the Oyster Commission of Louisiana, 339 Carondelet street.

Q. Were all of the Mississippi members of the Mississippi commission present?

A. Yes sir; I think they were all present.

Q. Now, at the first meeting, the president, President Hatlestad was not at our first conference owing to illness, but at our second meeting he was present.

Q. So that it is a fact that the neutral line was agreed upon between the two oyster commissions of the States?

A. Yes sir.

Q. And both of those commissions understood, when they made that agreement, that they had no authority, in law, to bind the people of either State by agreement?

A. Of course we felt we could bind the people of either State by our agreement, as far as the neutral territory was concerned; that is the only reason why we came on that agreement.

Q. You understood you had that authority?

A. Yes sir, certainly, pending the decision of the United States Supreme Court in the matter.

Q. There was no express ratification of that agreement mutually between the governors of the two States, subsequently?

A. Of what a greement?

Q. Fixing this neutral line.

A. Subsequently to that, no sir; it was altogether left to the commissions.

Q. Can you tell us how far it is from Petite pass to the most eastern end of the Isle à Pitre?

A. No sir.

Q. From the main shore of Louisiana along the eastern part of Saint Bernard parish, to the eastward, through the marshes, are there any habitations or industrial life of any kind?

A. Yes sir, there are some buildings at Three Mile bayou, there are two buildings there at Three Mile bayou.

382 Q. How are they inhabited?

A. Those at Three Mile bayou, why, I didn't see either of them inhabited. I understood there was one that was built there for the purpose of keeping a store.

Q. To trade with what class of people?

A. Well, any class that worked in the waters around there I suppose.

Q. Fishermen and that kind of people?

A. Yes sir.

By Mr. TAYLOR:

Q. You said that in the course of these negotiations between the two commissions, the primary object was to arrange for a friendly suit?

A. Yes sir.

Q. Please explain to us what you understood by arranging for a friendly suit?

A. Well, I suppose you understand what a friendly suit means?

Q. I want to understand what your understanding was? Was it to make up a case by agreement?

A. Make up a case by agreement to fix the line.

Q. So the court could decide it?

A. So there would be no hitch on either side from either State.

Q. Did it occur to any of you that if you agreed to make up such a case by agreement that the court wouldn't hear it at all?

A. No sir.

Q. Was it taken into consideration that if a case was just made up by consent, there was no real controversy, the Supreme Court would have no jurisdiction in the matter; did you take that into account?

A. No sir. Of course we thought we had a perfect right to make up a case. The object of it was we were anxious to settle this disputed line between the two States. Our object was to get this thing settled. We knew that the Mississippi people were taking our oysters; we were satisfied they were on Louisiana territory and we did not wish to aggravate the thing and we thought the best thing to do was to hold a conference and try and have an amicable decision by the court in regard to this line.

Q. And you wanted to make up a case with that end in view?

A. Not exactly make up a case but we wanted the thing decided in one way or the other. We did not call this conference for the simple purpose of making a law suit or a case. It was for our own satisfaction, to know where we stood, and for the protection of our State industry.

Redirect examination.

By Mr. DYMOND :

Q. In this case, was that to be conducted by the law department of the State, or, was it to be conducted by the oyster commission?

A. What?

Q. This proposed boundary suit between the two States?

A. By the oyster commission.

Q. Who was to handle that case; was it to be handled by the oyster commission or by the law department of the State government?

A. By the law department of the State.

Q. Were you aware of the fact and was the commission aware of the fact that there was a serious boundary dispute with the State of Mississippi?

A. Yes sir.

Q. Were both commissions aware of the previous negotiations between the amicable boundary commissions appointed by the governments of Louisiana and Mississippi?

A. Yes sir.

Q. Were they aware of the fact that the Mississippi Boundary Commission had recommended a friendly suit in the Supreme Court of the United States?

383 A. Yes sir.

By Mr. ZACHARIE :

Q. What did you mean by the use of the words agreed upon case? Did you mean a case to be submitted on an agreed upon state of facts or did you mean an ordinary suit in which evidence was to be adduced?

A. Why, of course that is what we meant exactly, where the evidence would be taken, just as we are doing now.

Q. Then: when you say a friendly suit, what did you mean by that?

A. Well, what I meant by a friendly suit, the meaning of the word, when I mentioned a friendly suit, was it would be an agreement between the two States, you understand; as far as that was concerned, we did not consider it anything to do that with them, but we decided it would be a sort of a friendly decision in regard to the line between the two States.

Q. Then the word friendly had nothing at all to do with the matter?

A. No sir.

Q. It would be just an ordinary suit?

A. Yes sir.

Q. In regard to this neutral zone, do I understand you correctly that the result of that was simply a concession on the part of the oyster commission that during the pendency of this suit they would not endeavor to enforce the law of Louisiana within that zone?

A. Yes sir.

Q. You do not profess that you had any authority to bind the State of Louisiana or the people of the State of Louisiana, but it was only in regard to your own official action?

A. That is all. In other words, we thought by doing this, that it would be understood, and that the law suit would be started and that neither of the States would file any demurrer against the suit, you understand, that the suit would go on right straight through and we would have a speedy decision in regard to this disputed line.

Q. What do you mean in regard to the State filing a demurrer?

A. Neither State would file a demurrer; that the thing would go on and we would have a speedy decision so we would know exactly—

Q. In other words, you wanted a judicial decision to settle this boundary?

A. Yes sir.

Q. And in the mean time you agreed that the Oyster Commission of Louisiana would not attempt to enforce the Louisiana law within this zone?

Mr. TAYLOR: Don't you think you are leading him a little too much?

A. Yes sir.

Recross-examination.

By Mr. TAYLOR:

Q. Why is it you say that this word friendly had nothing to do with it when you used it so warmly then, over and over again; why did you use that word so warmly then if it did not mean anything?

A. Because it was just a matter of using a word as to show when we decided to confer with the Oyster Commission of Mississippi, it was on that understanding, that it would enable the two States to bring in a suit between themselves, a friendly suit.

Q. There was to be no demurrer on either side?

A. No sir.

Q. Who is the counsel for the oyster commission?

A. Mr. John Dymond, Jr.

Q. Has he got anything to do with carrying on this suit?

A. Yes sir.

384 A. Yes sir.

Q. Has he taken any part in these proceedings, as far as you have heard?

A. I think he has.

Q. He is conducting them with great ability, is he not?

A. Yes sir, I think he is able to hold his own.

Captain ALFRED C. RUIZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. In St. Bernard parish, in the 7th ward.

Q. At what place?

A. At Ycloskey plantation.

Q. How long have you lived in the parish of Saint Bernard?

A. I have lived there a good while, I suppose somewheres like 40 years.

Q. Where were you born?

A. I was born in New Orleans.

Q. What is your business at present?

A. I am deputy inspector of the Louisiana Oyster Commission.

Q. Are you in charge of the oyster commission's patrol boat *Majestic*?

A. Yes sir.

Q. What was your business before you became a deputy inspector of the Oyster Commission of Louisiana?

A. Immediately before that I was planting.

Q. What was your business before you became a planter?

A. I was a sailor, boatman.

Q. When did you first start into the boat business or sailing business?

A. I started in the steamboat business in the neighborhood of 1871

Q. When did you start in the sail boat business?

A. It must have been somewheres around '74 or '73.

Q. Are you familiar with the Louisiana marshes?

A. In some parts.

Q. When did you first become familiar with the Louisiana marshes?

A. Somewheres around 1874.

Q. What were you doing at that time?

A. I was running freight from the rear part of Saint Bernard parish to New Orleans.

Q. Did you have occasion frequently at that time to go through the Louisiana marshes?

A. That was my route.

Q. And that was about the year 1874?

A. Yes sir.

Q. How long did you continue that business?

A. I ran there only two years, that is, in the winter time, when the road was put up to go down to Proctorville then I went around so I could get nearer to the planters so we could get the freight.

Q. How many years, Captain, were you engaged in going through the Saint Bernard marshes or Louisiana marshes?

A. I went through there, as I told you before, two years in succession, but my regular route was from Proctorville to the old basin.

Q. Did you in that two years' time, which I understand to be from 1874 to 1876?

A. Yes sir.

Q. Become familiar with the route which you were traversing?

A. Yes sir.

Q. When, then, did you again visit or go through that section of that country?

A. I went through in 1903.

Q. Under what circumstances did you make your second appearance there?

A. Under the employment of the Oyster Commission of Louisiana.

Q. What route was it that you took?

A. I used to go through Nine Mile bayou and from there into Mussle bayou and from there down Bayou Pitre and from Bayou Pitre to Bayou La Loutre and then to Bayou Eloi and from these to Lake Coquice and from there to Lake Robin and from
385 there to East bayou and up to the plantations.

Q. When you speak of right up to the plantations, do you refer to the plantations in that portion of Saint Bernard parish?

A. Yes sir.

Q. When you made your second trip in 1903, did you go through anywhere near the same route?

A. I did, as far as Bayou Mussle from the north side, from Nine Mile bayou.

Q. Did you notice whether any changes had occurred around in that interior country between the year 1874 and the year 1903?

A. Yes sir, a great deal, to such an extent that I did not recognize the country in a good many places.

Q. Of what character were these changes?

A. Well, I presume from the storms.

Q. No, I mean—

A. Washings away.

Q. Can you indicate any particular point at which these changes had occurred?

A. Well, yes, commence at the beginning, at Round island and Petite Pass island and also Petite pass.

Q. What changes have occurred there?

A. Well, Round island has partly disappeared, in fact, it has become a key, at the time I was navigating around there it used to be quite a good size island.

Q. What do you mean by quite a good size island?

A. I presume it was four or five acres; I didn't measure it, I just presume it was.

Q. Do you mean four or five acres in circumference?

A. Yes sir.

Q. What change has occurred in Petite pass?

A. It is much larger and Malheureux point has shortened up a great deal.

Q. Had any change occurred in the width of Petite pass?

A. Yes sir, it is very near twice its width, the width it was before when I was there.

Q. Had any change occurred in Grassy island?

A. Yes sir, a good deal, it has partly disappeared.

Q. Had any change occurred in Half Moon island?

A. I never visited that much, but I think there must be, I couldn't tell you how much.

Q. Had any change occurred in Nine Mile bayou?

A. Yes sir, that also.

Q. What change had occurred there?

A. There was quite a good size piece of land between the bayou and Blind pass, and today it is a very narrow strip with two cut offs in it connecting Blind pass with Nine Mile bayou.

Q. Had any changes occurred further along in Nine Mile bayou?

A. Pretty much all the way along. There is Pirate point on the northeast end of Nine Mile bayou, that was a good deal longer than it is now.

Q. Had any change occurred south of Pirate point?

A. Yes sir, it is much narrower than what it was, the point is.

Q. Following on down south from Pirate point what was the next change you noticed?

A. Pretty much all along to Mussle bayou it is wider and the point shorter by being washed away, on to Treasure bay.

Q. Going on further south, what other changes did you notice?

A. I didn't go through that bay further south.

Q. All of this territory you have spoken of, with the exception of Petite pass, Round island and Grassy island, is south of the shore line running from Petite pass to Isle à Pitre?

A. Yes sir.

Q. Do you know whether any changes have occurred further eastward, so far as your personal knowledge goes?

A. I didn't run through there before; I just went there here of late, since I have been employed by the commission; before I didn't pass there; I went around through Deep Water pass and outside of Isle à Pitre and inside of Cat island; in fact, I ran all around

386 Cat island and all the other islands and from there Chandeleur islands.

Q. Do you know whether any changes have occurred in Isle à Pitre since the first time you saw it?

A. Yes sir; the pass looks to be wider than before, the pass between Isle à Pitre and Cat island.

Q. Do you know whether any change has occurred in Three Mile bayou since you first saw it?

A. Yes sir.

Q. What was the width of that bayou when you first saw it?

A. I would have to guess at that. I only passed through the

Q. How wide do you think it was?

A. It must have been about $\frac{1}{2}$ of what it is now.

Q. What was the width of it, in yards?

A. At that time I suppose it was probably 100 yards; now it must be nearly 300 yards, as near as I can approximate it, I don't know for sure.

Q. Do you know, from your personal knowledge, whether any changes have occurred in Turkey or Johnson bayou?

A. No sir; I did not visit that part of the marsh at all; lately, have, I have not taken any notice there.

Q. Do you know whether any changes have occurred in the Chandeleur islands?

A. Yes sir.

Q. What changes have occurred there?

A. They have been washing away; the Chandeleur islands have been cut into several different pieces, when it used to be all one solid piece.

Q. What changes, if any, have occurred in Grand pass, within your knowledge?

A. I did not go through Grand pass.

Q. When you were testifying a moment ago in regard to an increase from 100 yards to 300 yards, what bayou did you refer to?

A. I referred to Three Mile bayou.

Q. What change, if any, in width, has occurred in Nine Mile bayou?

A. I couldn't exactly tell you what change has occurred.

Q. Is it wider now than when you first saw it?

A. I am sure it is wider, but I could not say whether it is 50 feet or 75 feet. I know it is something in that neighborhood, wider than what it was.

Q. Do you know whether any changes have occurred as a result of the north winds, on the shore line extending from Petite pass to Isle à Pitre?

A. Undoubtedly they have, it is a north shore.

Q. Do you know Alfred Joseph Monier?

A. Yes sir.

Q. And George Thiel?

A. Yes sir.

Q. Do you know whether either of those parties walked from

Petite pass to Isle à Pitre along the north shore of the Louisiana marsh?

A. Yes sir.

Q. Of your own knowledge?

A. Yes sir. They walked along there under my administration.

Q. Which one did the walking?

A. Alfred Monier.

Q. What did George Thiel do?

A. He rowed the boat along so as to cross Monier over the bayous.

Q. What bayous do you refer to?

A. Such as Blind pass, Nine Mile bayou, Three Mile bayou, Bayou Johnson, Turkey bayou, Drum bayou and down to Grand pass.

Q. Were you on the patrol boat Majestic at the time?

A. Yes sir; I put them down at Malheureux point and left them there and I sailed down to Three Mile bayou and let them walk along until they got to Three Mile bayou and they came back to the schooner there, and then I started them off the next day from Three Mile bayou down to Isle à Pitre and I went later and met them there.

Q. They are here as witnesses in this case?

A. Yes sir.

Q. What is the character of the soil of the Louisiana marshes?

387 A. Well, it is a marsh, same like any other marsh; the marsh will grow anything if you just drain it.

Q. How high is it above the sea level, tide level?

A. In regular tide it ought not to be no less than 18 inches, 12 to 18 inches.

Q. Have you got a sample of the soil taken from the Louisiana marshes?

A. Yes sir.

Q. Have you got it with you?

A. Yes sir. (Witness produces sample referred to.)

Q. Is this a sample of the soil taken from the Louisiana marshes?

A. Yes sir, that was taken off of Isle à Pitre, at the eastern end of Isle à Pitre.

Mr. DYMOND: Counsel for the State of Louisiana exhibits to the witness the said sample.

Q. From what part of the Louisiana marsh was this sample taken?

A. From the southeast end of Isle à Pitre.

Q. How close is that to the western end of Cat island?

A. I do not know.

Q. Well, about?

A. I presume it is about $\frac{3}{4}$ of a mile.

Q. What separates Cat island from Isle à Pitre at that point?

A. A deep water channel.

Q. Did you take a sample of soil from Cat island, from the western end of Cat island?

A. Yes sir.

Q. Have you got that?

A. Yes sir. (Witness produces sample referred to.)

Q. Is this a sample of soil taken from the western end of Cat island?

A. Yes sir.

Q. Were these two samples taken by you?

A. Yes sir, by me, personally.

Q. Are these the identical samples that you took?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer in evidence the sample of soil taken from the eastern end of Isle à Pitre, which will be marked "Sample No. 1" and the sample of soil taken from the western end of Cat island which will be marked by the commissioner "Sample No. 2."

Mr. McCLURG: Counsel for the State of Mississippi waive the necessity of any part of these samples being given to them, the sample to be deposited with the commissioner.

Q. How does the soil of the balance of the Louisiana marshes compare with this sample of soil marked No. 1 which you took from the eastern end of Isle à Pitre?

A. It is pretty much all the same. In some places, of course, it is lower and other places higher, but it is about the same soil all the way through.

By Mr. ZACHARIE:

Q. In the difference of conditions you have testified to in the interior of this marsh land, that is, the changes which have taken place between 1874 and 1903, did you find any places in the interior where there had been land at your first visit which was now water or did you find any places which was water at your first visit which are now land?

A. I found none that was water that is now land, it was all land and now water, the changes in the places that I noticed.

388 Q. Was that a special or a general change, so far as your observation went?

A. Yes sir.

Q. Well, yes, does not mean anything. I asked you in the alternative, whether it was special or general.

A. All through the Louisiana marsh from the mouth of the Mississippi river it is pretty much the same way, it washes away; well near the mouth of the Mississippi river it makes up but from there this way it don't, it washes away.

Q. That is a general change you noticed?

A. Yes sir.

Q. Have you ever been in any of these storms, either on your first visit, or on your subsequent visits?

A. No sir. I never was caught down there in any storm; I have been in a northwester but no storm.

Q. Have you ever visited these Louisiana marshes after any of these violent storms?

A. Yes sir; around my place, around my premises near the woods.

Q. What years was that in?

A. 1893 to 1894.

Q. Have you noticed any changes which have taken place on account of those storms?

A. Well, yes, back of my place it has dug out all the little lagoons and has piled up the drift about eight or ten feet right up against the woods, drift and mud mixed up.

Q. How near to your place are these Louisiana marshes?

A. It is surrounded by the Louisiana marshes, my place.

Q. Have you stated the time you noticed this?

A. Yes sir, it was right after these storms.

Q. After the storm of what year?

A. After the storm of 1893. Why, the very next day we were out there looking at it.

By Mr. DYMOND:

Q. I omitted to ask you, within what period of time you took these samples, how recently?

A. I took these samples on the 30th of last month.

Q. 30th of March?

A. Yes sir. (Referring to samples No. 1 and No. 2.)

Q. On your original visit through this area you have testified about, did you see any trees through the Louisiana marshes?

A. Yes sir.

Q. Where did you see them?

A. I saw some on Nine Mile bayou, on my first visit in the marsh, and some on the eastern coast of Mud Grass island, and also a bunch on Indian Mound bay.

Q. What character of trees were those?

A. I didn't go ashore to either one of them, but they looked at least — I did go to the Indian Mound Bay tree, that is a live oak tree there, but I didn't go to the tree on Nine Mile bayou and neither to the one on Mud Grass island.

Q. Are those trees living or dead?

A. The one on Nine Mile bayou has disappeared entirely.

Q. What about the one on Mud Grass island?

A. There is nothing but a snag of it there, the limbs are dead and it is pretty much broken away.

Q. How about the one on Indian Mound bay?

A. It is dead also.

Q. The one on Indian Mound bay I understand you to say is a live oak tree?

A. Yes sir, it is a live oak tree.

Cross-examination.

By Mr. McCLURG:

Q. From what direction do these storms usually come which you have spoken of?

A. They generally come from the eastward, northeast-
389 ward, but most of the damage is done when they come from the northwest; after blowing a certain length of time from the northeast it whips around to the northwest and forms a terrible big sea and that is what does most of the damage.

Q. What is your idea about the deposit of the land that is cut away from these points, where does it go?

A. I presume,—it is a light soil,—it is carried right out through the deep water channels and carried out to the sound outside.

Q. Outside of what?

A. Outside of Isle à Pitre.

Q. You mean to the south of Isle à Pitre?

A. Yes sir, near Point Chicot and all over there it forms mud flats all along there.

Q. You testified about Petite pass, that it had widened within your knowledge?

A. Yes sir.

Q. Where do you think the ground taken from there, rested?

A. I have no knowledge where it went. I wasn't out there, I have not any idea.

Q. And that is true — to all of these other widenings and cut offs you speak of?

A. Yes sir.

Q. You don't know where it was carried?

A. No sir.

Q. While you have seen the territory disappearing you have not seen any made?

A. No sir.

Q. No new islands?

A. No sir.

Q. And no increase of any of them?

A. Not to my knowledge, not where I have been, so far.

Q. You don't know where it goes?

A. No sir.

Q. In plying your steamer in 1871 and your sail boat from 1874 to 1876, you were carrying on a transportation business between planters and New Orleans?

A. Yes sir.

Q. Between the planters along the eastern coast of Saint Bernard parish?

A. On the western coast.

Q. Where is Proctorville?

A. That is in the back of Lake Borgne between Saint Malo and Proctor's point.

Q. That is to the west of Petite pass?

A. To the southwest of Petite pass and due north from the Rigolets.

Q. How did you go from Proctorville to New Orleans?

A. I went through the Rigolets at the first beginning we used to go before I undertook the carrying myself, I went with schooners that used to go through Chef Menteur, before the bridge was built and—that Chattanooga railroad at the time it was called that, built a bridge over there and then we had to change our route and go through the Rigolets.

Q. Chef Menteur is west of the Rigolets?

A. Southwest.

Q. It empties into Lake Borgne?

A. Yes sir, and Lake Pontchartrain, it connects the two lakes.

Q. You mean Chef Menteur does?

A. Of course, it empties into Lake Borgne right to the west of Alligator point.

Q. It was the channel?

A. The channel, which?

Q. The Chef Menteur.

A. It is a very deep channel in there, some places there is I reckon as much as 40 feet of water; I came to an anchor at one spot there and my anchor didn't touch bottom.

Q. Do you know where that old fort is down there?

A. Yes sir, it is right in about the middle of the Chef, between the two mouths.

Q. How long is the Chef?

390 A. I couldn't tell you, I never measured it. All I can do is to give hearsay and I don't propose to say that. I did not measure any of it, and I can't swear what it is.

Q. I will accept hearsay. How long do you guess it is?

A. I presume it is about two miles and a half or three miles, three miles at the outside, it is very crooked and that makes it look a good deal longer than it is.

Q. Have you any idea how long that old fort has been there?

A. No sir.

Q. Is it built of brick?

A. Yes sir.

Q. Has it the appearance of having been there a good many years?

A. Yes sir.

Q. What fort is it?

A. Fort Macomb.

Q. When was that railroad built?

A. I don't remember the year.

Q. After 1871 of course?

A. Yes sir—no, I think they were building it I believe about that time.

Q. How wide is Lake Borgne at its widest part?

A. I was told that it was 22 miles long, from the Rigolets you mean, that is the route we used to take.

Q. What is your best judgment as to the distance from the mouth of Pearl river to Petite pass?

A. I never ran it.

Q. Do you know the distance from Petite pass to the eastern end of Isle à Pitre?

A. I never ran it direct.

Q. I thought you said you went along there at the time your friends walked it?

A. I have run it, but I went in the marsh in some places and came out there; but to run it direct from point to point I never did, but I have gone all over the ground.

Q. So you did not see, then, those two witnesses in that trip, all the way from Petite pass to Isle à Pitre?

A. I told you before that I put them down at Malheureux point and left them there and went from there to Three Mile bayou and met them there and started them the next day at Three Mile bayou and met them on Isle à Pitre.

Q. Which way did you go?

A. I went in on the coast.

Q. On the inside?

A. No sir, on the outside.

Q. Didn't you travel then from Petite pass to Isle à Pitre?

A. I travelled from Petite pass to Three Mile bayou first and laid there one night and started off the next day.

Q. I didn't mean one continuous passage?

A. How do you want me to tell you the distance?

Q. If you went from Petite pass to the eastern end of Isle à Pitre, I ask you?

A. I have gone there.

Q. What is the distance?

A. I couldn't tell you.

Q. Give us your best judgment?

A. I reckon, let us see, probably 10½ miles.

Q. You never undertook to walk any of the distance between those two points yourself?

A. No sir.

Q. Is it not true that they were then, and are now, low wet places?

A. On the north shore of that coast?

Q. Yes?

A. No sir, I don't believe there is, there may be some very small spots, but it don't look so to me, and I have run very close to it.

Q. Is it covered with grass?

A. Yes sir, all over there is covered with grass; there is not a

place that is bare with the exception of a few spots of shells, wherever the shells have been washed up it prevents the grass from growing.

Q. Can you tell us how far it is from Three Mile bayou to the Mississippi shore, directly north?

A. No sir.

Q. Do you know how far it is from Nine Mile bayou directly north to the Mississippi shore?

A. From Nine Mile bayou?

Q. Yes?

A. No sir, I never ran it.

Q. Do you know how far Turkey bayou is directly north to the Mississippi shore?

A. No sir.

Q. Do you know how far it is from the north end of Isle à Pitre to the Mississippi shore, directly north?

A. Well, up to Cat island, but not to the main land.

Q. Cat island is not the Mississippi shore. Do you undertake to say that the sample No. 2, taken from the west end of Cat island, is a fair sample of all the material, dirt or earth, that is in that island?

A. Yes sir.

Q. And that this other sample No. 1 is a fair sample of all of the formation of Isle à Pitre?

A. Yes sir.

Q. Is the whole of Isle à Pitre of the same character of soil as this sample?

A. I never walked all over it, but I presume it must be, what we walked over was pretty much the same and other parts I saw was very much the same kind, there is probably a difference in the growth of the grass or probably different grass; in some places you will find this tall caney prairie grass and other places you will find this fine prairie grass and other places you will find a sort of myrtle grass.

Q. How far from the water line was sample No. 1 taken?

A. It was taken, I presume about three or four feet from the edge, right on the surface of the land.

Q. At that point it is about 18 inches above the usual tide level?

A. Somewheres about that.

Q. Do the high tides run over most of the marshes?

A. It does in some places. I have never been there, as I told you, before, in a storm to judge that. I never saw any water over any of it, to the best of my recollection. I have been there in northwesterns, some people might call it a storm, it lasts a day or two, but it was not enough to carry water or spread water over the land.

Q. What is your best judgment as to the distance from the well marked high tide line on the main land of Saint Bernard parish to the eastern end of Isle à Pitre?

Q. You mean in general, on the whole line?

Q. On a direct line?

A. The difference between the low tide and the rising tide?

Q. Both?

A. It is just what I gave you a while ago.

Q. Eight to ten miles?

A. No sir, I didn't tell you eight to ten miles, I said 12 to 18 inches.

Q. You don't catch my question?

A. Your question is the distance?

Q. The distance from the well defined water line high tide or mean tide on the main land of Saint Bernard parish—

A. On the whole coast?

Q. Yes, to the eastern end—

A. There is a difference in that coast; some places are much higher than others.

Q. The average?

A. It would be a hard thing to average.

Q. Approximate it?

A. It would be very hard to do because of those parts on a medium tide are two feet and a half to three feet out of the water, where other parts with a medium tide are level with the water.

392 Q. Do you understand where the high tide marks on the main land of Saint Bernard parish, the eastern border of Saint Bernard parish are?

A. No, I do not, I never laid there long enough to see it.

Q. How far is it from the land that is cultivated in the eastern portion of Saint Bernard parish to the eastern end of Isle à Pitre?

A. About four miles.

By Mr. ZACHARIE:

Q. The ex attorney general of Mississippi asked you a question, how far it was from the cultivated land of Saint Bernard parish to the eastern edge of Isle à Pitre?

A. I understood him to say on the coast along Three Mile bayou. Oh, from Isle à Pitre, that is quite a bigger distance.

Q. Answer the question?

A. It is a longer distance from Isle à Pitre. But I understood you to say along the shore line right about there, the lower end of Saint Bernard is not cultivated it is out in the wild woods.

Q. He has asked you about the cultivable portion of the parish of Saint Bernard out to the eastern extremity of Isle à Pitre, what the distance is?

A. I understand what you mean; but I couldn't tell you the distance, I never walked it or never sailed through it, in fact you can't sail through it, you have to walk it, how can I tell you something—

By Mr. McCLURG:

Q. You are not familiar with the territory, then, between those two points?

- A. I am in the navigable part of it.
- Q. Is not the greater portion of it navigable by light draft crafts?
- A. It must be done only by light draft crafts; you can't go with afts drawing any depth.
- Q. And the greater portion of it is navigable in that way?
- A. Yes sir.
- Q. And has been during your knowledge of it?
- A. Yes sir.
- Q. Those trees that you spoke of, that you saw there some years ago have all gone or dead, were near the water's edge when you first saw them were they not?
- A. No sir, they were a little distance off from the water's edge, probably they are now on the water's edge with the exception of one, the one on Mud Grass island, that is right near the edge now and when I first saw it it was quite a distance from the edge.
- Q. What kind of trees are they?
- A. I think they are live oak, one I am certain of, I am positive but the other two I did not go to them, the other two clumps.
- Q. How large are they?
- A. Pretty good size trees.
- Q. There are no trees lying back on the interior of any of those lands?
- A. The only one is on Indian Mound island.
- Q. What is the vegetable growth on that island?
- A. Most of it is this prairie grass, myrtle, there is some blue weed.
- Q. Is that the characteristic of all that marsh, that kind of growth?
- A. Yes sir.

By Mr. DYMOND:

- Q. Suppose you were at the Rigolets and wanted to go to Proctorville, in which direction would you start?
- A. We generally sail south.
- Q. If you testified a moment ago that the direction that Proctorville lay from the Rigolets was north, were you correct in saying that?
- A. No, I meant to say that the Rigolets were north from Proctorville.
- Q. Then is Proctorville south from the Rigolets?
- A. Yes sir, undoubtedly.
- Q. Captain, are you familiar with the channel which existed, running from Pearl river into Mississippi sound, in 1871 or 1874?
- A. I went through there with lumber, and I went and got lumber there. You can just follow the buoys and get the channel.
- Q. Where was that channel in 1871 or 1874 in relation to Half Moon island?
- A. It was to the north of Half Moon island.
- Q. Where is that channel today?
- A. About the same place.

Q. Is that the deep water channel that leads from the Rigolets into Mississippi sound?

A. Yes sir.

Q. Or from Pearl river into Mississippi sound?

A. Yes sir, it goes down to Chandeleur.

Q. Will you please look at this document which is marked Exhibit E, and notice the red ink line emerging out of the mouth of Pearl river, passing north of Half Moon island through Mississippi sound southwest of Cat island and northwest of Isle à Pitre, and state whether or not that is the deep water channel—

A. This is about the course that I used to run when I went through there; we used the two channels together to get in there, that was about 1873 or 1874 I used to go down to east Pascagoula and get lumber from Moss point.

Q. Did you ever pass by that channel there between Cat island and Isle à Pitre?

A. Yes sir, in 1871, I went right in there between Cat island and Ship island.

Q. Will you please look at this map which is marked map No. 6 and notice the black ink dotted line emerging from the mouth of Pearl river and extending eastward north of Half Moon island through Mississippi sound southwest of Cat island and northeast of Isle à Pitre, and state whether or not that line is or is not along the deep water channel?

A. It looks to me to be so. Here is about the course we used to take.

Q. Is that the deep water channel you used to take in 1871?

A. This is the deep water channel, known by all sailors that have been sailing down in those waters.

Q. Is that the deep water channel known as such today?

A. Yes sir.

By Mr. McCLURG :

Q. Do you know the distance from the deep water channel marked on map No. 6, to the Mississippi shore at any point?

A. No sir.

Q. Do you know the distance from the deep water channel marked on Exhibit E, to the Mississippi shore at any point?

A. No sir.

Q. You have no idea?

A. I can't tell you exactly.

Q. Do you know whether the deep water channel marked on Exhibit E. is precisely the same as that marked on map No. 6?

A. I believe it is, yes sir.

Q. Do you know of any other channel out of Lake Borgne, except this deep water channel?

A. Lake Borgne has no channel.

Q. Out of Lake Borgne?

A. The Rigolets is the only channel that passes in front of Lake

Borgne and Petite pass, that is, the Rigolets passes in front of Lake Borgne.

Q. In which water does Petite pass lead ?

A. That leads in the sound.

Q. Into Mississippi sound ?

A. Yes sir.

Q. Is there any pass or channel leading to the southeast of Petite pass ?

A. No sir.

Q. Do you know how far it is from Petite pass to Nine Mile bayou ?

A. It is about seven or eight miles.

Q. Has that Nine Mile bayou a deep channel ?

A. Very deep.

394 Q. How long is Nine Mile bayou ?

A. It is surely not nine miles.

Q. Into what does it lead going south ?

A. Into Nine Mile bay.

Q. And then, going out of that, south, what is the channel ?

A. In the marshes.

Q. Yes ?

A. There is no channel at all, very small channel.

Q. I mean small or large, going south now through Nine Mile bayou into Nine Mile bay and then going southerly ?

A. Over here ?

Q. Yes, how would you go ?

A. That is a very shallow channel, no channel at all, it is about 2 feet and a half to 3 feet, with the exception of some holes.

By Mr. DYMOND :

Q. Counsel for the State of Mississippi asked you just now in regard to a channel down Nine Mile bayou ; is there any channel after Nine Mile bayou enters the bay in the marsh ?

A. None of those bays have any channel, they have got merely a little deep water in the center, but to call it a channel you can't.

Q. What is the average depth of water on the inside through which you would pass after you leave Nine Mile bayou ?

A. The only place I could pass with the Majestic was from there through Mud Grass Island pass.

Q. How deep was that ?

A. That, well right near the points, at least the western point of the pass, there is probably five or six feet of water.

Q. Does that extend all the way from the end of Nine Mile bayou ?

A. In spots.

Q. Is there any well defined channel through the Louisiana marshes ?

A. No sir, there is not.

Q. What is the average depth of the water inside of the Louisiana marshes?

A. Taking the average it would be about 2½ to 3 feet.

Q. How would that in depth compare with the deep water channel extending north of Half Moon island?

A. It wouldn't come anywhere near it. There is always, at in places that I have sounded, nine and ten feet of water; at some places I have sounded even more.

Q. Which channel?

A. On the north shore of Half Moon island.

Q. Now, in a general way, what is the change and transition, which is occurring in the Louisiana marshes, which has occurred and is occurring, so far as you know?

A. It is occurring yet as far as I can see.

Q. What is it?

A. Washing away this Pirate point, it is forming a cut off near the point.

Q. I am not asking you in regard to particular instances, asking you—

A. Yes, I know, but I just mentioned this as a point I have taken particular notice of.

By Mr. ZACHARIE:

Q. From your general observation and experience in the last years, is the interior of these Louisiana marshes making land, the land being disintegrated?

A. It is losing land, it is not making it.

By Mr. McCLURG:

Q. How much water does the Majestic draw?

A. Three feet and a half, with ballast.

Q. She has been going through these marshes as you have testified?

A. With high tide. I have to take my chances to go, pick my chance to go, and then I am dragging, I can't use any other board.

By Mr. TAYLOR:

Q. It is possible, then, to navigate in there with a b
395 drawing three feet and a half down as far as Indian Moun

A. Vessels go there but very light draft vessels. I can't go there with the Majestic; I may have gone there with the launch but she would touch bottom before she gets there and she only draws inches.

At this stage of the proceedings, the commissioner adjourned the hearing for recess to be resumed again at 2:15 p. m. at the same place and date.

Resumption of Proceedings.

APRIL 16, 1904—2:15 p. m.

Pursuant to adjournment and all parties being present the commissioner resumed the hearing.

GEORGE H. DUNBAR, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I live in New Orleans.

Q. How old a man are you?

A. I am just 60 years old.

Q. What is your business?

A. I am a manufacturer of canned goods, I am in the canned goods business.

Q. Do you can oysters?

A. Yes sir.

Q. Have you a canning establishment at English Lookout in Louisiana?

A. I have, that is my firm has, G. W. Dunbar and Sons.

Q. Have you an oyster canning establishment at Bay Saint Louis?

A. Yes sir.

Q. Did you ever have an oyster canning establishment at Biloxi Mississippi?

A. I was interested in one there.

Q. How long have you been in the oyster business?

A. Since April, 1870. I was a pioneer in the State, about 1872.

Q. Are you fond of sailing, Mr. Dunbar?

A. I do a great deal of it.

Q. And live on the water?

A. Yes sir.

Q. Have you a schooner in which you make excursions for pleasure?

A. Yes sir.

Q. How long have you been accustomed to indulge in this character of sport?

A. About 20 or 25 years.

Q. Throughout what general localities have your excursions extended, during that period?

A. All the way from Mobile down, coming in through, among the different islands, as far as Bird island, Battledore island, almost down to the passes, and all through the marsh.

Q. What marsh do you refer to?

A. The Louisiana marsh.

396 Q. Are you familiar with the section of the country from Biloxi on the east to the Rigolets on west, the water I mean?

A. Yes sir, slightly, not as much as an expert.

Q. Are you familiar with the water from the main shore of Mississippi on the north down to Breton island on the south?

A. I have a general idea of all that country, yes sir.

Q. Have you been sailing through that country on your various trips?

A. Yes sir.

Q. Do you make use of the charts of the United States Government as published by the Coast and Geodetic Survey on those trips you make?

A. I generally do, but I mostly depend on the knowledge of the captain of my schooner; of course I observe a good deal as I go along with him; I don't say that I could go through this marsh by myself.

Q. Have you had occasion on these excursions of yours, to familiarize yourself with what is commonly known as the Louisiana marsh?

A. Yes sir.

Q. Have you had occasion to familiarize yourself with what is commonly known as the north shore of the Louisiana marsh?

A. Yes sir.

Q. As well as with the east shore of the Louisiana marsh?

A. Yes sir.

Q. When did your excursions into this country first begin?

A. Into this marsh?

Q. Yes?

A. I suppose about seven or eight years ago, I commenced going into the marsh; I was going to the eastward mostly all the time.

Q. When did you first make your excursions down along the eastern shore of the marsh?

A. About that time.

Q. Have you noticed any changes to have occurred in the topography of this Louisiana Marsh country, in the past seven or eight years that you have known it?

A. Only at certain points. I can't say that I have been down there often enough to say that I have seen this island go off or that island taken away.

Q. Do you know of any particular instance where there has been any change of which you have made observation?

A. I know of one especially, up near Half Moon island, down there by Saint Joe light.

Q. What has occurred near Half Moon island?

A. An island was washed away.

Q. Is that Round island?

A. Yes sir, that is gone.

Q. Did you ever see Round island before it had washed away?

A. Yes sir.

Q. Have you seen the locality since it was washed away?

A. I saw it last week.

Q. What is there now?

A. There is nothing but breakers on there in ordinary tide.

Q. Do you know of any other instance where there has been any disappearance of any land or island?

A. No sir; I can't say that I do, of islands, that have gone away.

Q. What about Saint Joe?

A. That little island, yes sir, that is the one I referred to before, that has gone; I fished on that two years ago and last year I went there and that is gone.

Q. Is there any other island or point which you have noticed or have knowledge of having changed its formation?

A. Well, there has been a general change in the conformation, the gaps have widened since I have been going through there, one, Creole gap, for instance, and Grand pass has changed too in widening and I believe there were some islands down at the southern end of Grand pass there, I think my captain, when I was with him last year, told me they were washed away.

Q. You have not seen it yourself?

A. I saw there were no islands there, they are turned into a key.

307 Q. Had you previously, in Grand pass, seen the island to which you refer?

A. Yes sir.

Q. When was it you last saw it?

A. About two or three years ago.

Q. Was it an island then?

A. It was what you call keys, small islands, where these rotten oyster shells came out about two or three feet out of the water.

Q. Is it there now?

A. Yes sir, but under water, the key has washed away from the heavy winds.

Q. Have you been in the neighborhood of Point Chicot?

A. Yes sir, I have been there two or three times.

Q. Where does Point Chicot get its name from?

A. Well, I can't say but I know it is full of chicos, stumps, there are a lot of stumps down there.

Q. What sort of stumps are those?

A. I couldn't tell you the quality of the wood but I should judge they were cypress.

Q. Were they observable above the surface of the water?

A. No, not since I have been going down there.

Q. Were these stumps at Point Chico?

A. Yes sir, right along this beach here.

Q. How far were they from the land?

A. Possibly 50 or 75 feet.

Q. What were you doing there?

A. I was fishing and lost my fishing line there by getting it caught on one of these stumps.

Q. Did you lose your line as a result of its becoming entangled in the stumps?

A. Yes sir, I had to keep quite a supply of them.

Q. Did you hear the testimony of Major Harrod as to the existence of stumps at this point 50 years ago?

A. No sir.

Q. Did you have any knowledge of the fact that he testified as to that fact?

A. No sir. I only know from my own experience that the stumps were there, from being down there and getting my lines caught in them.

Q. As I understand it, those stumps are under water?

A. Yes sir.

Q. Are you from your knowledge of sailing in Mississippi sound able to say what is the recognized deep water channel between the mouth of Pearl river and the pass between Cat island and Isle à Pitre?

A. Yes sir, I think I can point it out.

Q. Will you please look at this map which is now before you marked map No 6 and state whether you can point out that deep water channel?

A. It is the channel mapped out by the Government as the deep water channel. This is the line; I think it is called the South-western channel, running through here.

Q. When you say this line is the line, do you refer to the black dotted line extending from the mouth of Pearl river eastward to the deep water channel between Cat island and Isle à Pitre?

A. The line of the channel is marked on the chart but not this way.

Q. How is it marked on the chart?

A. It is marked in this shape.

Q. Is it marked by buoys?

A. There are buoys between Saint Joe and Cat Island lights, or possibly Heron light, there is a channel right here; I have been through there following the channel, I have been from Biloxi to New Orleans by way of that channel.

Q. As marked on this chart?

A. Yes sir; I followed it by my compass in my boat, in my launch.

Q. Is that channel north of the line marked C. C.?

A. Yes sir, that channel is north of it.

Q. How close is that channel to the Mississippi shore?

A. Well, the shore varies very much as you can see here, it shows for itself, I should judge from two to four or six miles, in different places, opposite Pass Christian it is further.

Q. Where does that channel start from, on the westward?

398 A. I can't tell you where that channel starts from, I know when we get into the Rigolets, just coming into the Rigolets around that point we leave it.

Q. Is there a channel extending out of the mouth of Pearl river?

A. Yes sir; it is buoyed too.

Q. Does that channel extending out of the mouth of Pearl river, take up the other channel after it leaves Pearl river?

A. Yes sir, it does there, it is buoyed out.

By Mr. ZACHARIE:

Q. You say that a part of your business is canning oysters?

A. Yes sir, I think since about 1872 or 1873.

Q. Where did you get your oysters from at that time?

A. Well, from the Louisiana marsh; they always told me they brought them from there, that is, the fishermen.

Q. You have always got them from the Louisiana marsh?

A. Yes sir, that is, when I was canning oysters in the city of New Orleans.

Q. Well, when you were over in the State of Mississippi—

A. I was over there in 1882.

Q. Where did you get them from then?

A. We were drawing both from Louisiana and Mississippi.

Q. How does the supply from Mississippi compare with that from Louisiana?

A. Well, the supply from Louisiana is the greatest.

Q. Are there any very large natural reefs of oysters in the Mississippi waters?

A. I couldn't tell you about the reefs.

Q. Are they still plentiful in Mississippi waters or pretty well exhausted?

A. I don't know that I could answer that. I know the factories are all getting pretty well supplied, I think that with greater capacity—

Q. Did you ever penetrate into the interior of these Louisiana marshes?

A. I have, but I don't know that I could say anything much about it, as I am not familiar enough with it, I have not been there often enough to be able to answer any questions as to what has happened there.

Q. Have you ever visited these Louisiana marshes at any time after any of these storms, these severe autumnal gales?

A. Yes sir, I was in the marsh right after the storm of 1893.

Q. Do you think you saw some effects of that storm in there?

A. I can't say that I did.

Q. You had not seen the territory before?

A. If I saw it I did not pay enough attention.

Q. Can you, from your recollection, state what severe autumnal gales we have had on that Mississippi coast and on that por-

tion of the State of Louisiana bordering there, within your recollection?

A. The one that did the most havoc was the storm of 1893.

Q. Do you remember any before that?

A. No sir.

Q. Have you ever been in the Chinch country?

A. No sir, I never have been.

Cross examination.

By Mr. TAYLOR:

Q. How many years did you say you have known this area of land and water in reference to which we have been speaking?

A. I have been going through there just about eight years or more.

Q. You live in the vicinity?

A. I live in New Orleans.

Q. You have a factory at Bay Saint Louis; you are often in that neighborhood? the territory we have been speaking of?

A. Yes sir, I am often in the neighborhood; I was there last week.

Q. Have you seen Nine Mile bayou?

A. Yes sir, I have been in it.

Q. Have you been in Three Mile bayou?

A. Yes sir.

Q. Have you been in Turkey bayou?

399 A. Yes sir, sometimes called Johuson bayou.

Q. And Grand pass?

A. Yes sir. Creole gap and Isle à Pitre.

Q. Have they always been there since you knew them?

A. Yes sir.

Q. Have you any knowledge of a time those bayous were not there?

A. No sir.

Q. Have you ever been in these waters down in here?

A. Yes sir; I have been down in here.

Q. And down there?

A. Yes sir.

Q. Down in Treasure bay?

A. Yes sir.

Q. Down in here, Lake of the Mound?

A. Yes sir.

Q. We will say, from Nine Mile bayou—

A. I don't know whether I came through Nine Mile bayou; I believe I came in through the eastward.

Q. You have been through Nine Mile bayou?

A. Yes sir, not any further down than Raccoon island.

Q. Have you ever been in Treasure bay?

A. Yes sir.

Q. Ever been down in this Indian Mound bay?

A. Yes sir.

Q. Ever been down in this Lake of the Mound bay?

A. No sir, not without I came out through——

Q. After Indian Mound bay where did you go, show us how you got there?

A. I can't show you there, I might have come from the eastward.

Q. Let us stick to Indian Mound bay, then, going southeast——

A. I don't say that I went through Indian Mound bay, I say I came through this——

Q. Through Southwest pass?

A. Yes sir.

Q. Then what direction did you go to get out?

A. Don't ask me. I got down here. I came through inland to Point Chico.

Q. You went inland through these islands?

A. Yes sir.

Q. Until you got to Point Chico?

A. Yes sir.

Q. Ever since you have known this area of waters which we have referred to, has the general conformation of the country been the same, this area been the same, the general aspect of it?

A. I just simply suppose it is, I won't say for sure, I have not been down there often enough.

Q. I want to know, since you have known it, has the general conformation been just as it is now?

A. Except as to storms——

Q. Such as you have described?

A. — and winds and bad weather which have caused different embrasures in different parts of this marsh.

Q. Is it not a fact that such changes and embrasures, as you refer to, from such causes, are minor changes in the general profile of the country there?

A. I don't know about that; I think it depends a great deal on the severity of a storm or the severity of the wind, as to what the change will be.

Q. I am asking you what changes you know took place there, is it not a fact that they are minor changes?

A. You mean in this section right here?

Q. In any section that you have been in, that they are mere minor changes?

A. No sir; I do not think so.

Q. Specify one that you would call a great change?

A. For instance there will come a great storm say and another storm comes and they will take away a quarter of a mile and a mile of land, cut it down into the water. I am not saying that I have seen it done.

Q. I am not asking you about what might happen. I am asking you about what has happened, so far as you know, Will you please

state whether any such change has taken place where there has
a mile of land swept away that you know of?

400 A. No sir, I couldn't testify to that; I know it has tak
away—

Q. Let us come back to the question as I stated it. Such chang
that you have known to take place from these effects, have they
been minor changes, such as you have known?

A. Yes sir, such as I have known.

Q. Have you ever heard in this locality, any tradition about a
general change in the conformation here, in the memory of men no
living, have you ever heard any tradition of that sort, of a gener
change in these lands here?

A. I have.

Q. What have you heard?

A. I have heard that every time there is a storm or bad weathe
or high winds, that different localities take different aspects, certain
parts goes under water, certain parts are washed away.

Q. That is not my question at all. I am talking about the gen
eral aspect of the country within the memory of man now living, is
there any tradition that the general aspect of this country has
changed?

A. I should suppose that the general aspect has changed if a part
of the country has changed.

Q. You give that as a theory not as a fact?

A. As a fact, that the general aspect must have changed if part of
it did.

Q. Have you any personal knowledge upon which you base that
assertion?

A. No more than what I testified.

Q. Have you got any personal knowledge except such facts as you
have given?

A. Except as I saw.

Q. Is this district of which we are speaking, east of the Nine Mile
bayou, is that an inhabited and cultivated section?

A. No sir.

Q. There are some houses here and there?

A. Yes sir.

Q. But it is not an inhabited and cultivated section of the coun-
try?

A. No sir.

By Mr. McCLURG:

Q. This deep water channel that you have spoken of, leading out
of the mouth of Pearl river through the Mississippi sound, you only
testify to that from your own general observation and information
from others?

A. Not as to that. I have testified to that channel, having gone
through it myself and followed the chart and the instructions ac-
cording to the topography marked out on that chart.

Q. I meant to ascertain whether you had ever made any soundings of the depth of water there yourself?

A. I can't say that I have made the soundings from the fact that they were already printed on the chart and I followed the chart.

Q. You followed the chart?

A. Yes sir.

Q. That is what I intended to ascertain when I asked the general question. You said something about the proximity of that channel to the Mississippi shore between the mouth of Pearl river and Saint Joseph light house; does not that channel pass very closely to the Mississippi shore?

A. Yes sir; right there.

Q. Within a few hundred yards of it?

A. Yes sir, that is the nearest point that it touches.

Q. How far is that point to the most eastern mouth of Pearl river?

A. I should judge, I am not going to give you anything exact about that.

Q. I don't ask you, that, I ask for your best judgment.

A. I should judge about six miles east.

Q. Please keep your eye on map No. 6 and answer me this, how far it is from the Mississippi shore at Waveland, due south, to this deep water channel indicated on that map?

A. I should judge that would be four miles.

Q. How far is the line indicated on your map as the deep water channel line, due south from Gulfview or Lakeshore?

401 A. About four miles and three quarters.

Q. Now the same from Bay Saint Louis, the town of Bay Saint Louis I mean?

A. About five miles.

Q. Now, from the center of the Bay Saint Louis?

A. That is it, about the same distance, to the best of my judgment.

Q. Now, how far is it from Long Beach?

A. I should judge it was about five miles.

Q. Now, how far is it from Gulfport?

A. That is about seven and a half or eight miles.

Q. How far is it from Pass Christian?

A. It is very near five miles from Pass Christian to the channel.

Q. Take Mississippi City?

A. That is about seven miles.

Q. You are giving those distances down to the deep water channel you have indicated?

A. I am following the channel right along, I am taking those distances from the channel.

Q. Take next, Biloxi?

A. That is very near ten miles.

Q. What channel is it that you have been following in answering my questions?

A. This channel that is north of this line that I testified about.

Q. What is the name of the channel?

A. I don't know that there is any name to it, but we call it the southwestern channel.

Q. Is that what you know as the deep water channel?

A. Yes sir, that is what I know.

Q. And is that the channel that Louisiana claims to be the dividing line between that State and Mississippi?

A. I don't know anything about that; I only say about this channel that I have used to go to New Orleans, that is what we call the deep water channel.

Q. From where?

A. From Biloxi.

Q. Is there not, south of that channel, on that map, another channel, marked prominently, than the one you have been following?

A. May be, but I never took any notice of it.

Q. Look on it again and follow the black dotted marked channel out of the mouth of Pearl river and tell me how far that channel is, south of the Mississippi shore at its nearest point five or six miles east of the mouth of Pearl river?

A. That is about the same distance as I testified a little while ago.

Q. Name it please.

A. About three or four hundred yards.

Q. How far is it from Gulfview or Lakeshore, due south, to this deep channel line that we are now speaking of, marked C-C?

A. This is exactly at the junction of the channel that I have been speaking about, and it is the same distance I testified where Lakeshore was a moment ago, I think I said about four miles.

Q. How far is that C-C deep water channel line, due south, of Waveland?

A. Six miles.

Q. From Bay Saint Louis?

A. Five miles.

Q. You have been speaking of statute miles?

A. Yes sir; if these squares are statute miles that changes the whole thing—

Q. I understand that gives statute miles?

A. —that would increase all of that.

Q. Statute miles?

A. Yes sir.

Q. You have been speaking of nautical miles?

A. I have been taking these squares as nautical miles; I did not get an opportunity of measuring them.

Q. Keep up your measurements at the same rate, as nautical miles, and tell me how far it is from Bay Saint Louis to this deep water channel line?

A. About ten miles.

Q. Give me Pass Christian on the same scale?

A. Gentlemen, this is all guess work I am giving you here be-

402 cause — have not got a compass the same as a mariner would go to work and measure these miles off, I am simply giving you my idea ; if you want to get the correct idea about it—

Q. I am not responsible for your answers ; I just want to get the best I can on cross-examination. Take Pass Christian, how many nautical miles, due south, from Pass Christian to this deep water channel ?

A. About eight miles I should judge.

Q. Give me Mississippi City next ?

A. About 15 miles.

Q. And Biloxi ?

A. About 18 miles, from Biloxi light.

Q. Is it not true that this deep water channel is within 18 miles of the Mississippi shore at every point east of the point due south of the town of Biloxi ?

A. East of the town of Biloxi ?

Q. Due south of the town of Biloxi ?

A. 18 miles, south of Biloxi light ?

Q. West ?

A. Yes sir.

Q. Less than 18 miles of the Mississippi shore ?

A. Yes sir.

Q. Can you tell us of your own knowledge what islands lie between the Mississippi shore and this deep water channel indicated on your map ?

A. You mean at Biloxi ?

Q. From Biloxi to the mouth of Pearl river ?

A. Ship island, Deer island, Cat island, they are the three principal islands that I know of, Ship island, Deer island and Cat island, I don't know of any other.

Q. The principal public oyster reefs in the Mississippi sound lie north or south of this deep water channel as indicated on this map ?

A. I can't tell you, I don't know.

Q. Do you know the depth of this deep water channel indicated on that map ?

A. This one ?

Q. Yes ?

A. No sir.

Q. I mean this black one, this particular one ?

A. The first one I spoke about ?

Q. I mean the black one marked C-C ?

A. No sir ; I don't know the depth of it.

Q. Can you tell us of your own knowledge the depth of the water in the sound between the line marked as the deep water channel line and what we understand you claim to be the north shore of the Louisiana marshes from Petite pass to the end of the Isle à Pitre ?

A. Well, 8, 6, 10, 12 feet of water all through that section.

Q. And the depth of the water north of that channel to the Mississippi shore between the mouth of Pearl river and Biloxi along

the neighborhood of the line you first indicated that you travelled from Biloxi to New Orleans?

A. About 12 feet, 10, 8, 6, about the same depth of water all through that sound, some parts possibly a little deeper.

Q. In the usual course of trade and commerce, vessels of all kinds plying the Mississippi sound and the neighborhood of these two channels of which you have spoken are informed as to the depth of them, they have general information; vessels travelling in that neighborhood understand the depth of water?

A. Yes sir.

Q. You do not undertake to speak scientifically as to the changes in the conformation of the marshes down there?

A. Not scientifically, no sir.

Q. Only from your observation covering the years that you have spoken of?

A. Yes sir.

Q. Can you tell us from which directions the storms come that destroy the general contour of those points or islands?

403 A. In case the wind is north, northwest, north, northeast, why of course the northern shore is one of the most attacked and with southerly, southeasterly, and easterly winds, this eastern shore suffers much more than it would with north winds.

Q. The storms coming towards the Gulf are the most violent?

A. Yes sir, they are longer duration.

Q. And most destructive?

A. We have northwest winds just as strong as almost any gale but they don't last as long as the eastern gales.

Q. They would come in the direction of Lake Borgne?

A. Yes sir.

Q. Yes sir, and would have a short sweep until they strike the outwards coast between Petite pass and Isle à Pitre?

A. Yes sir.

Q. They would have a greater sweep from the east or southeast over the waters?

A. That is to say, according to the direction, you know; as I said before I think that the southeasterly winds are of longer duration than the northwesterly, therefore they would beat up against the shore for a longer time than the northwesterly winds, but one would be equally as damaging as the other while it lasted.

Q. The longer it lasted the more damaging it would be?

A. Yes sir.

Q. The greater the violence the more damage?

A. Yes sir.

Q. Have you any idea what becomes of the delimitations of those islands washed away by the action of the waters?

A. All I could account for it would be they are washed away and driven back with the force of the tide and allowed to rest in deeper water and causes these shoals that we have all along on the eastern shore here.

Q. Would there not be a tendency to build up the east shore of the Louisiana main land by the storms coming from the east or southeast?

A. I do not think so; build up the land you mean?

Q. Yes?

A. No sir; not at all.

Q. Can you say whether there have been any accretions to the main land along the eastern boundary of Saint Bernard parish?

A. I don't know, I can't answer that.

Q. Can you say from what direction the storm of 1893 which you spoke about a moment ago, came?

A. Yes sir; I think that storm came out from the northeast in the morning. I was in Biloxi then.

Q. Was that the storm that drove some of the schooners and like craft up on the shore at Biloxi and that neighborhood?

A. Yes sir, and drove my own too.

Q. Biloxi lies on the northern side of the sound there?

A. It is north of the sound.

Q. How could the wind from the north drive crafts on to the north shore at Biloxi?

A. Well, it started with a northeast wind and then the wind hauled around to the southward and carried the tide with it, the current.

Q. As a matter of fact the damage was done by the winds from the south in 1893?

A. I couldn't tell you. The whole was bad enough; the northeast wind was bad and when it went to the southeast that was bad too.

Q. At any rate the crafts driven ashore were north of the waters?

A. Yes sir, that is, as far as Biloxi was concerned.

Redirect examination.

By Mr. DYMOND:

Q. You were asked in regard to tradition; do you know whether there is any tradition in regard to Creole gap as to how it was created then?

A. Well, I know that gap has increased in width a good deal since I have been going through it.

Q. Do you know how it originated, is there any tradition or history about it?

404 A. I don't want to say positively, but it came from a storm, the water cut through there.

Q. You were speaking about Biloxi; is not Biloxi north of Ship island?

A. Yes sir.

Q. Is not Ship island between it and the gulf of Mexico?

A. Yes sir.

Q. You were speaking also in regard to Gulfport; is it not north of Cat island?

A. Yes sir.

Q. Does not Cat island come in between it and the gulf of Mexico?

A. Yes sir.

Q. You were speaking of a deep water channel shown on map No. 6 as being the deep water channel that you would sail from Biloxi to Pearl river and you were also speaking of another channel, deep water channel, marked C-C. Now, if you were to go from Pearl river with the intention of going out between Cat island and Isle à Pitre, would you follow the channel called the deep water channel on map No. 6, or would you follow the channel marked C-C?

A. Well, gentlemen, that would depend on the weather; if the weather was very fine, I think I would just come—I would follow this inside channel, it is the shorter course, unless I had to go to Chandeleur.

Q. I do not think you understand my question. I asked you, you were leaving the mouth of Pearl river for the purpose of going out between Cat island and Isle à Pitre, would you follow the deep water channel marked by the original line on the chart, or would you follow the line marked C-C?

A. I would follow the line marked C-C; you mean to go between Ship island and Chandeleur—

Q. To go between Cat island and Isle à Pitre?

A. Yes sir, I would follow this channel.

Q. When you say this channel, what channel do you mean?

A. The C-C channel, for convenience, on account of shortness.

Q. Is that the shortest channel between the mouth of Pearl river and the channel between Cat island and Isle à Pitre?

A. Yes sir, this is the shortest channel.

Q. The one marked C-C?

A. Yes sir.

Recross-examination.

By Mr. McCLURG:

Q. Is it not true, Captain, that very little attention is paid to any of those channels, unless the draft of the boat requires it?

A. I think so, yes sir, very little attention.

Q. If you want to go anywhere in this neighborhood and have a boat of very light draft, you go regardless of the channel?

A. Yes sir.

Q. And that is the way with all commerce down in the Sound?

A. Yes sir; with all light draft vessels you take the shortest way through.

EDWARD McCULLOM, witness sworn and examined on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. ZACHARIE :

Q. Where do you reside ?

A. I reside in Terrebonne parish.

Q. How old are you ?

A. I am 59 years old.

Q. What is your business ?

A. Sugar planter.

405 Q. Are you familiar with the western coast of Louisiana the sea coast of Louisiana on the gulf of Mexico south of Terrebonne, Lafourche and those other parishes ?

A. I am between Terrebonne and as far east as Grand island.

Q. What islands lie south of the territory where you reside ?

A. Facing the sea, first is Timbalier on the east, then Caillou, then Wine, and then Last island.

Q. Is there an island there by the name of Bear island ?

A. There are a number of marsh islands that go by local names.

Q. How long have you been familiar with that coast ?

A. Since 1875.

Q. From your observation during that time, up to date, have there been any changes that have occurred by storm in that coast or in those islands ?

A. Well, on the general coast, facing the Gulf, there has been no radical change; in all of the interior there has been very marked changes.

Q. What have been those changes ?

A. There has been a general widening of all the bays, a washing away of nearly all of the islands that I am familiar with more or less, and a general erosion of the coast line.

Q. What, so far as your observation extended, have these changes been caused by ?

A. I think by causes, by wave action principally.

Q. Ordinary wave action, or action from the results of storms ?

A. My observation has been there has been a gradual and progressive change; of course storms do produce an effect, but I never saw a radical change of the coast made by any one storm.

Q. By any one storm that you have been able to trace ?

A. Yes sir.

Q. But you do know, there have been, since 1875, very marked changes in those islands and the coast ?

A. Yes sir, and some of them to the extent of absolutely disappearing.

Cross-examination.

By Mr. McCLURG :

Q. Can you say that there is any violent or marked change on the main coast of Louisiana from the mouth of Pearl river south for miles?

A. No sir, you mistake me ; I have given no testimony with reference to anything except in Terrebonne parish which is west of the Mississippi river ; I know nothing about—

Q. You know nothing about this territory we have been talking about?

A. No sir, nothing whatever, I was questioned in regard to change on the coast of the parish of Terrebonne which lies west of the Mississippi river.

Q. You don't know anything about this country that we are questioning about?

A. No sir.

ALFRED JOSEPH MONIER, witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you live?

A. Saint Bernard parish.

Q. Whereabouts in Saint Bernard parish?

A. The lower part of the parish.

Q. How old are you?

A. I am twenty years old.

Q. Do you know Mr. Alfred C. Ruiz?

A. Yes sir.

406 Q. Does he live anywhere near you?

A. He lives in the same house.

Q. Did you, at the request of Mr. Ruiz, make a trip on the schooner Majestic?

A. Yes sir.

Q. Out as far as Petite pass?

A. Yes sir.

Q. Who was with you at the time, the name of the party?

A. George Thiel.

Q. What did you do when you came to Petite pass?

A. Well I got ashore and I walked on down—

Q. When you say you got ashore, where did you get ashore?

A. I got ashore on Point Malheureux.

Q. Was that south of Petite pass, was that at Petite pass?

A. That was abreast of Petite pass.

Q. Who was with you when you left the schooner, anybody?

A. When I left the schooner, George Thiel.

Q. Did you have a skiff?

A. Yes sir.

Q. What did you do after you got on land?

A. I walked on down through the marsh.

Q. Where did George Thiel go?

A. He pulled on the edge of the shore.

Q. Did he pull the boat along the water?

A. Yes sir.

Q. He rowed along as you walked along?

A. Yes sir.

Q. Where did you walk from; starting at Malheureux point in which direction did you walk according to the compass, in a general way?

A. I couldn't tell in what direction because I didn't have any compass.

Q. Did you follow the shore line?

A. Yes sir.

Q. Do you know where Isle à Pitre is?

A. I walked down to the north end of Isle à Pitre.

Q. Did you walk along the north shore of the Louisiana marsh from Malheureux point to Isle à Pitre?

A. Yes sir.

Q. When did you do that?

A. On the 9th day of January.

Q. Of what year, was it this year?

A. Yes sir.

Q. How many days did it take you to walk that—

A. Two days.

Q. —distance?

A. Two days.

Q. Did you have any difficulty in walking along this shore line?

A. None at all.

Q. What was the character of the shore line as you went along?

A. The shore line was hard.

Q. Was it above water?

A. Yes sir.

Q. What did you do when you came to Blind pass?

A. Well, the one that was with me pulling the skiff crossed me over.

Q. Did you get out of the skiff again when you got on the other side of Blind pass?

A. Yes sir.

Q. Did you walk then along to Nine Mile bayou?

A. Yes sir.

Q. What did you do when you got to Nine Mile bayou?

A. The one I had with me, he came and got me and crossed me over on the other side.

Q. Who was the one you had with you?

A. George Thiel.

Q. Is he here as a witness?

A. Yes sir.

Q. Did you then get out of the boat again at Nine Mile bayou on its eastern side?

A. Yes sir.

Q. Then from there to where did you walk along the coast, what was the next place you came to?

407 A. I couldn't tell you.

Q. Do you mean that you don't know the name of it?

A. Yes sir, I don't know the name.

Q. Whenever you came to a bayou what did you do?

A. Well, whenever I came to a bayou that I could not walk around, George Thiel pulled me across.

Q. About how many bayous did you cross that way in the trip you made from Malheureux point to Isle à Pitre?

A. I couldn't tell you exactly but it was between seven and eight.

Q. Did you have any trouble in walking along the shore line?

A. No sir, no trouble at all.

Q. About how much above the water was the shore line?

A. About a foot and a half to two feet.

Q. Did you come to any part of the shore line where there were shells?

A. Yes sir.

Q. What sort of a shore line was that, was it hard?

A. Yes sir, it was hard.

Q. Could you have driven a buggy on any part of that shore line?

A. Yes sir.

Q. How much of it; what proportion of it could you have driven a buggy along?

A. I couldn't tell you because I don't know the names of the places.

Q. How much of the whole trip was of such a character as you have just mentioned where you could drive a carriage, was it half of it, quarter, three quarters?

A. I couldn't tell you.

By Mr. ZACHARIE:

Q. Could you have driven it the whole way, a horse and buggy?

A. Not the whole way because they had those bayous to cross.

Q. I mean with the exception of the bayous?

A. Very near the whole way.

By Mr. DYMOND:

Q. Did you get your feet wet walking along there?

A. No sir.

By Mr. ZACHARIE :

Q. You went dry shod ?

A. Yes sir.

By Mr. DYMOND :

Q. For that whole trip, from Malheureux point to Isle à Pitre ?

A. Yes sir, to the north end of Isle à Pitre.

Cross-examination.

By Mr. McCLURG :

Q. You didn't find any boulevards laid off there, did you, for buggy or carriage driving ?

A. No sir.

Q. You saw no lands in cultivation over there ?

A. No sir.

Q. You saw no cattle or other kind of stock over there ?

A. No stock at all.

Q. You didn't find any industrial life of any kind on your walk from Malheureux point to the east end of Isle à Pitre ?

A. No sir.

Q. How came you to make that trip ?

A. Well, I was sent out there by Captain Ruiz.

Q. For what purpose ?

A. For the purpose of walking this marsh.

Q. Was there any high tide during your trip ?

A. No sir, there was no high tide at all.

Q. Do you undertake to tell the commissioner that that sort of a trip could be made at any time during the year ?

408 A. Yes sir.

Q. And that there is no difficulty about it at all ?

A. No sir, there is not.

Q. There is no tall grass or anything to interfere with you ?

A. Very few places they have tall grass.

Q. Do you mean to say that is the character of the islands across to the south of you. Could you have made that trip anywhere across those islands from Malheureux point out to the east end of Isle à Pitre the same as you made it along the water's edge ?

A. Yes sir.

Q. What houses did you find along that route, habitations that people lived in ?

A. Well, I did not find but one house that people lived in.

Q. Where was that ?

A. I couldn't tell you the name of the bayou.

Q. It was by Three Mile bayou was it not ? Is it not true that that is the only house you saw on that trip ?

A. At Three Mile bayou there is one house, but nobody lives in it.

Q. And you only encountered one house inhabited ?

A. Yes sir.

Q. And don't you remember where that was ?

A. No sir.

Q. By whom was that house inhabited, I mean to say the occupation of the people ?

A. I couldn't tell you

Q. You don't know whether they were fishermen ?

A. No sir.

Q. What sort of a looking house was it ? Was it a mere fisherman's camp or resort for people who take oysters and fish down there ?

A. It was more of a fishing camp.

Redirect examination.

By Mr. ZACHARIE :

Q. Which house is that, that you allude to, what is it called, whose house is it.

A. I couldn't tell you the name.

By Mr. McCLURG :

Q. And you had to resort to your skiff, seven or eight times, in making that trip ?

A. Yes sir.

Q. How far is it from Malheureux point to the east end of Isle à Pitre ?

A. I couldn't tell you.

Q. You say it took you two days to make the trip ?

A. Yes sir.

Q. About how many miles an hour did you walk in making it ?

A. I couldn't exactly tell you.

Q. You travelled in your usual gait ?

A. Yes sir.

Q. Unobstructed by high grass or anything like that ?

A. Yes sir.

Q. You walked as fast as three miles an hour you think ?

A. Something like that.

Q. Did you travel constantly from morning until night ?

A. Yes sir, from half past seven until about four o'clock.

Q. From half past seven until four ?

Q. Yes sir.

Q. About nine hours a day ?

A. Yes sir.

Q. Each day ?

A. Yes sir.

Q. So, then it took you about 18 hours' travelling to make it ?

A. Yes sir.

Q. And you think you made as much as three miles an hour on an average?

A. About that.

Q. According to that, then, it would be about 50 miles you went over?

409 A. I couldn't tell you how far it was.

Q. What was the character of the soil over which you travelled, sandy?

A. Some parts of it was.

Q. Easily influenced by the action of the waters, wasn't it that character of land?

A. I believe it was.

Q. The character was about the same from start to finish on your trip, was it not, the same character of soil?

A. Yes sir.

Q. Along that line you travelled, have you any idea how far you were from the Mississippi shore?

A. No sir; I have no idea.

Q. How wide do you think that Nine Mile bayou is?

A. I couldn't tell you.

Q. Blind pass, do you know about how wide that is?

A. No sir.

Q. And Three Mile bayou?

A. No sir.

Q. You had to cross Turkey bayou too, did you not?

A. I believe I did.

Q. How about Grand pass, did you cross that?

A. Yes sir.

Q. Did you cross Creole gap?

A. Yes sir.

Q. Cross Jack Williams bayou?

A. I never heard of such a name.

Q. How about Johnson bayou?

A. Yes sir.

Q. Did you cross that?

A. Yes sir.

Q. Do you remember how wide it was?

A. No sir.

Q. Did you ever go down the east water line of Saint Bernard?

A. No sir.

Q. You don't know anything about that territory down there?

A. No sir.

Q. That trip was made to prepare you to testify in this case, was it?

A. Yes sir.

Q. And so it was with your companion?

A. Yes sir.

Q. The time was selected by others for your start?

A. Yes sir.

Q. And you were paid for the trip?

A. Yes sir.

GEORGE THIEL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I live in the city of New Orleans; I used to live down in Saint Bernard, La Chinch, the lower part of it.

Q. Do you know Mr. Alfred Joseph Monier who has just testified in this case?

A. Yes sir.

Q. Did you go with him in January 1904 out to Malheureux point?

A. Yes sir.

Q. What purpose did you go there for?

A. I was sent over there for the purpose of pulling a boat along the lake and Monier was to walk the marsh, when I would carry him to the marsh he walked the marsh, and I pulled the boat along and while I went along I would get off from time to time and
410 and go ashore and walk the marsh a piece to find out whether it was solid and it was perfectly solid the best marsh I ever went in, you can carry cattle there and turn them loose and they would be very well off, that is one of the best marshes I ever travelled on and I have been on many marshes but that is the best I ever travelled on.

Q. Did you follow along with the skiff all the way from Malheureux point to Isle à Pitre?

A. Yes sir.

Q. Did you see Alfred Joseph Monier walking along there?

A. Yes sir, I saw him walk every step of it.

Q. Did you see him walk that whole distance?

A. Yes sir.

Q. What did you do when he came to a bayou or anything like that?

A. Then I pulled him to the shore, I carried him across the bayou, then he would get out on the other side and walk again, and I would row into the lake and go to pulling again.

Q. Did you follow along that whole shore line from Malheureux point to Isle à Pitre?

A. Yes sir.

Q. How long did it take you to do that?

A. Two days.

Q. Do you know whether Monier got his feet wet in making that trip?

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cotton?

A. I don't

A. No sir, he did not, it was perfectly dry, he couldn't get his feet wet, it was a solid marsh, that is one of the best marshes I have ever been in, I know I have been in many marshes but that is one of the best marshes I ever was in, that sure is a fine marsh. I have been walking back from it, I have been hunting ducks all my life in marshes and I was kind of scared of the marsh, they told me it couldn't be walked, but when I went there I found a different thing.

Q. You have had some experience in trembling prairies?

A. Yes sir.

Q. Was that a trembling prairie?

A. No sir, it was perfectly solid, there was no trembling prairie out that.

Q. Who was it that requested you to make this trip?

A. Captain Ruiz.

Cross-examination.

By Mr. McClurg:

Monier would mash the marsh and you would shoot the shutes?

No, he didn't mash the marsh.

The marsh wouldn't mash?

No sir, that is one of the best marshes I have ever been in, there are oyster shells and clam shells all piled upon the bank there as an oyster reef.

Was Monier webbed footed like a duck?

No sir; he had on his shoes, his feet never got wet, there wasn't much water to get his feet wet.

The marsh doesn't overflow from the high tides of the Gulf there?

I don't say it don't, it overflows sometimes, in storms it will be covered like anywhere else; I have seen land sometimes have three feet of water over it, high land, when we cultivate it, from storms, in that two days' travelling from Malheureux point to the east

Isle à Pitre what evidence of industrial life did you find, cultivation of the soil, gardens and things like that?

I didn't find anything of the kind there, but I suppose if they went there and plant it it would grow such as cotton that can stand water, rice, cane.

You didn't find any of those things there?

No sir.

Do you ever raise any cotton?

A. Yes sir.

Q. Do you think it will grow there?

A. Yes sir.

Don't you think fish and oysters will pay better over there than

Don't know about fishes, I never did fish any.

Q. You didn't find any cattle or stock grazing?

A. No sir.

Q. No manufactories?

A. No sir.

Q. No commercial life of any kind?

A. No sir.

Q. Just sea grass only?

A. Coons, they got raccoons over on the prairie, I saw several of them over there.

At this stage of the proceedings, the commissioner adjourned the hearing to be resumed at the hour of 10.30 a. m. at the same place, April 8th, 1904.

Resumption of Proceedings.

NEW ORLEANS, April 8th, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed this day at the same time and place.

Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, att'y gen'l of Louisiana.

Mess. John Dymond, Jr. F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. William Williams, att'y gen'l of Mississippi.

Hon. Hannis Taylor, Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Dr. WILLIAM C. STUBBS, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. At Audubon Park, New Orleans, that is my domicile.

Q. What is your present occupation?

A. Well, I am engaged in work for the State of Louisiana, first as professor in the State university, second as director of the experimental station, and third as director of the geological survey. At present, also, I am engaged in making the State exhibit at St. Louis. You know I am State commissioner, but that is just temporary.

Q. Of what geological survey are you a director?

A. The Louisiana State geological survey.

Q. Of what branch are you a professor at the Louisiana State university?

A. Professor of agriculture.

Q. When did you come to Louisiana?

A. I came here in September 1885.

Q. Where were you located previous to that?

A. At Auburn, Alabama, in the State agricultural and mechanical college there for 16 years.

412 Q. What connection did you have with that institution?

A. I was professor of chemistry, and the last eight years, I believe it is eight years, I was State chemist and at one time I was assistant State geologist.

Q. Where were you born?

A. I was born in Virginia.

Q. How old are you?

A. I was born on December 7th 1846, I think that makes me 60 years of age.

Q. Referring to this geological survey of the State of Louisiana, have any steps been taken to make a geological survey of this State?

A. Oh, yes; we have published six reports and have the 7th one nearly out; the survey has been in operation about ten years, and every two years we issue what is called a biennial report, they vary in size from 100 to 300 pages, they are printed and are being distributed to anybody that wants them. I think you have copies of them.

Q. In connection with this geological survey of Louisiana which is being conducted, have you had occasion to study the geological history of Louisiana?

A. That has been the first and primary object of the survey and in every volume we discuss that subject. In one of my volumes is a very full discussion of the embayment, as we term it, of the Mississippi river, and gives a geological map, not only of Louisiana but of the surrounding States, showing the geological changes which have taken place from the beginning up to the present. That has been one of the main objects of the survey.

Q. What is the geological history of the formation of that section of Louisiana south of New Orleans, in a general way?

A. You mean the Mississippi part, the river part?

Q. Yes?

A. That is a portion of the Mississippi embayment and of alluvial formation that has been entirely formed within recent geological times, and is but a continuation of the same delta that extends from Cairo down to the Gulf, and it is increasing, I may remark, growing rapidly, every year. The amount of sediment brought down by the Mississippi river is being deposited near its mouth and along the banks on both sides of the Mississippi river and is increasing the area of Louisiana continually.

Q. Prior to the completion of the levee system what was the annual phenomena that occurred in Louisiana with a rise of the Mississippi river?

A. Overflow of its banks, thus making a deposit on the banks of the river and therefore bringing the banks of the river to higher places in the rear, and then an overflow at every point carried the sediment into the swamps and out through the various bayous and

channels which were distributaries of the Mississippi while in a overflow. I would like to explain that. Our bayous, properly speaking, in Louisiana, are not tributaries but distributaries, they are the outlets for overflow and before the days of levees there were from the Atchafalaya down to the Gulf numerous little outlets flowing in every direction to the ocean acting as so many mouths for the discharge of the water at flood tide.

Q. What phenomena took place at the point where those bayous would reach the sea?

A. There would be a deposit of matter and a reformation of the soil above the surrounding marsh. Hence, all of our bayous have what are called banks that are cultivable or can be used for agricultural purposes, while in the rear they cannot.

Q. If you were to look at the map of the parish of Saint Bernard and see leading from the Mississippi river to the Bayou Terre Beuf which is divided up as it progresses eastward into two branches, one called Bayou La Loutre, and the other called Bayou Terre Beuf, what effect in the formation of that section of the country would those bayous have had prior to the construction of the levee system in that locality, on the banks of the Mississippi river?

413 A. Your question means this, that prior to the levee system what influences did these bayous have on the surrounding country as they went to the sea?

Q. Yes.

A. They had in a small way, the same effect that the Mississippi river had upon its surrounding country in overflows, they deposited a great deal of sediment that was being carried to the sea and helped to build up that section of the country. All the marsh lands that we now have along the banks of Bayou Terre aux Beuf that are being cultivated came from the deposit of this stream or bayou that ran through that country, and in fact the whole of Saint Bernard parish has been built up by that agency, the bayous coming from the Mississippi river.

Q. Are you familiar with the alluvial soil of Louisiana?

A. I should say I am. I have made thousands of analyses of it I reckon.

Q. Will you look at this sample of soil which is marked sample No. 1, as coming from the eastern end of Isle à Pitre and state whether or not, in your opinion, that is a sample of alluvial soil?

A. It is hardly worth while for me to examine it as I gave it a thorough examination yesterday. This is unquestionably Mississippi detritus; brought down by the Mississippi river, and is unquestionably Mississippi mud. The other sample that I examined yesterday—

Q. Which other sample are you referring to, sample No. 2?

A. The one in sand there; that is not of Mississippi origin.

Q. When you say Mississippi do you mean Mississippi river?

A. Yes sir, Mississippi river. In speaking of the Mississippi river, the whole southern portion of the State of Louisiana and the greater

portion of Mississippi and especially this entire territory has been built up by the material brought down by the Mississippi river and its distributaries, its tributaries extend from the extreme eastern portion of the United States as far west as Yellowstone park. We have got perhaps in this soil the best material of 29 States and Territories, therefore it comes down to us laden with this material and as it reaches the lower portion of this delta it is deposited and particularly is it deposited when it strikes salt water. Whenever fresh water loaded with sediment comes in contact with salt water, it is immediately deposited and hence we have this whole land running from Morgan City clear around here beyond Lake Pontchartrain, all of that has been nothing more nor less than deposits made from this water carrying this sediment striking the salt water of the Gulf. The accretion has been gradual, the salt water areas once extended up to Cairo, Illinois, and from there down to here, to here, this deposit has been formed and placed by contact with the salt water which has been gradually receding in front of it.

Q. If this earth therefore marked sample No. 1, was found at the eastern end of Isle à Pitre in the Saint Bernard marsh, how would you state that it got there?

A. Evidently from the Mississippi river through some of its bayous or outlets.

Q. Would the bayous be in that locality?

A. Not necessarily now, but they have been. You must not forget one fact, that the bayous are constantly changing, for instance, our Lake Pontchartrain and Lake Manchac are nothing more nor less than arms of the ocean that are cut off by deposits thrown around them and they are remnants of the old gulf of Mexico and not true lakes.

Q. Do you consider yourself sufficiently an expert on Louisiana soil to identify this as a sample of Louisiana alluvium?

A. I would give it as my opinion, as an expert, that it is unquestionably Mississippi alluvium, brought down by the Mississippi river and deposited at some time within recent geological years.

Q. Will you explain, when you say recent geological years, within what period of time you mean?

A. Geology does not deal with time, but only in comparisons; this applies to what we call the Quaternary age of geology, that is the age of geology that is going on today.

Q. Can't you give us some more definite information as to point of time?

A. No sir, because after all geology is measured only by what we call periods and not time. There is no period of time we can apply to geology, whether this was a million, or five hundred thousand or five million years the geologist can only speculate; but I would like to remark so you may understand, that Louisiana is a very young State geologically speaking; our oldest records are of the latest Mesozoic age. All the balance of Louisiana has been

made by water deposited within what we call geologically recent epochs or periods.

By Mr. TAYLOR :

Q. That might be a period of five thousand years?

A. It may have been a million or five million years, we don't know. Now, count the bluff lands of Baton Rouge, and Vicksburg in your State, with them count what we call the underlying cluster or Port Hudson cluster, as we term them geologically as being anterior to this, and the alluvium is the last formation, the youngest formation in geology, it represents today what is going on now, and this alluvium was the latest geological formation which is still in progress.

By Mr. DYMOND :

Q. Are you able to state what effect the construction of the levee system in Louisiana would have on those localities where the levees were constructed in so far as it kept out the annual overflow from the Mississippi river?

A. Yes sir. There is no doubt about one fact and that is that our levees are preventing the formation of fresh land in the rear of our levees in Louisiana from Baton Rouge on one side and the Arkansas line on the other.

Q. Down to what point?

A. Down to the Gulf, down as far as your levees go, I believe your levees don't go quite to the Gulf. Because now, by means of our levees all water coming down the Mississippi river is forced at some time in the year to take its sediment and carry it on to the Gulf. Sometimes we find a sand bar formed, sometimes a deposit made and in a few months of overflow you will find that the scouring effect of the river digs that up and carries it away. In other words, there is a shifting continuously of the bottom of the Mississippi river on account of contracting the current between its banks and making it scour as it goes to the Gulf, and therefore we are carrying to the Gulf an immense quantity, estimated to be the equivalent to a mile square and 360 feet high every year, of sediment and which sediment is being deposited in the gulf of Mexico, that is Humphrey and Abbot's estimate, and this leveeing of the river has prevented the marsh lands or swamp lands in the rear of our plantations from filling up. They are added to now only by the washings from the plantation itself between the levee and the rear carried down by our ditches. Before that, every overflow, as every crevasse does now, filled up these bottom lands very considerably.

Q. That being the case, where is this land now being deposited as it is carried by the river?

A. Through the present outlets of the Mississippi consisting of the Atchafalaya and until recently, of the Bayou Lafourche, but the Bayou Lafourche is now stopped up, and the passes down at the mouth of the river; for instance, you have at the mouth of the

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river the Jump, Southwest pass, South pass, and Pass La Loutre, and Northeast pass, all those are outlets of the Mississippi river and assist in carrying off this sediment to the Gulf every year; the Atchafalaya is carrying quite a considerable quantity. The La-
 15 ouché carried so much that one of the reasons for stopping it up was that its mouth was being constantly filled up with sediment carried down by the fresh water, meeting with the salt water
 15 and depositing it at the mouth, and they couldn't keep it open; therefore they decided to close it up, where it debouches from the Mississippi river.

Q. If the levee system was completed from New Orleans down to English Turn in about 1750, would there have been any increase or elevation of this Saint Bernard territory by the alluvium of the Mississippi river after that date?

A. Unquestionably if the levees stopped at English Turn, because there would be a general overflow below that just as we have now below your levees during high water. I went down to the mouth of the river during that very high water here and after you passed beyond the levees there was a big sea; only occasionally we see it.

Q. Are you familiar with the locality you are talking about in order to speak intelligently?

A. I am speaking intelligently about it, in a general way. If

If the levees had extended down to English Turn?

A. Let me see, English Turn—

Just below the original mouth of Bayou Terre Bœuf at the Mississippi river, about three or four miles below, whether there would have been any deposit in this section which is 50 miles north from that locality?

Answering you on general principles I would say no; but I cannot tell you without studying the geology of the country because there may have been some backward flow, but I would say on general principles as to the question abstractly but a study of the topography of that country might show me that the water might be discharged backwards, but it is hardly probable. I would have a topographical map to decide that question.

If you were now shown a geological map of the northeast part of the parish of Saint Bernard, with the original Bayou La Louché shown thereon, and were told that Bayou La Loutre was a branch of Bayou Terre aux Bœuf, which latter bayou connected with the Mississippi river, and if Bayou La Loutre was closed about 1750 by the closing of Bayou Terre aux Bœuf where it connected with the Mississippi river would there have been any increase by the alluvium in the northeast portion of the parish of Saint Bernard since 1750?

A. I should answer that, broadly speaking. No; but an explanation may be in order, and that is, that a great deal of the sediment carried down to the Gulf has its very finest particles deposited and

when very high tides come and sweep over the surrounding country for miles around, there might be a very small deposit but so little it would be inconsequential; for instance, the peninsula of Florida has been built up by the Gulf stream carrying the sediment from the Mississippi and as it turns the coast of Florida and goes up and touches it and Cuba it is deposited there and it is building up Cuba, so that geologically speaking some of these days Florida and Cuba will be united but that is a very slow growth.

Q. Would you please tell me which direction the current takes at the mouth of the Mississippi river where it discharges into the gulf of Mexico, if you know, what is the general tendency?

A. The general tendency is this, in the tropical portions of the Gulf—

Q. I am speaking immediately at the mouth of the river?

A. In the tropical portions of the Gulf where the waters are heated and rise to the surface and an undercurrent sweeps down to take its place creating what we call the Gulf stream and this stream is presumed to go on out through the Gulf northward passing around the Florida coast. Now, the presumption is, that as this current passes through the Gulf it has a sort of northwest direction going on up, ascending, around the coast of Florida. If I had known you were going to ask me that question I would have gotten Maury's chart of the Gulf; it is a physical geography of the sea. I can only say there is a current coming from the southern portion of the gulf of Mexico, going on northward through the straits of Florida to Cuba, going on up the coast and then diagonally over to England. It is that warm Gulf current that gives life to England and Ireland, and as Bob Taylor said in one of his speeches, it had its birth in Dixie.

416 Q. Have you ever been on Grand island, immediately to the westward?

A. No sir; I have never personally visited that island, but I have had it examined by one of our geologists very thoroughly.

Q. What influence has the deposit of silt and sediment from the Mississippi river had on the eastern end of that island?

A. You mean the watering place down here?

Q. Yes?

A. I should not say very much. That is an island—you know there is one noted fact about the coast of Louisiana and that is that from the mouth of the Mississippi river westward, nearly all the islands are of wind and tide origin and are sand, they are sandy, and I do not think they have any real connection with the deposit of the Mississippi river. They are sand beaches, as we term them. Last island and the island called Grand Terre and other islands in other words the coast of Louisiana. If you will notice, to the westward, from the Mississippi river, is almost a continuous line of these sand islands running on to Texas and the Texas coast is full of them. Galveston is situated on one of those islands, it is a big sand beach washed up probably by storms and not of alluvium origin.

Q. Are you aware whether there is or is not any difference in the color of the sand on the east end of Grand island as compared with the color of the sand on the west end of it?

A. No sir; I never examined that critically, but I should imagine that the east end would be a little alluvium mixture, the alluvium brought through Barrataria bay before Bayou Lafourche and other bayous were closed, for a number of years, and several times since by water from overflow caused by crevasses; last year we had a crevasse and the discharge from it passed by the eastern end of Grand island and therefore you would expect to find in the course of time some alluvium mixed in with that soil.

Q. Where there has been a cessation of deposit, what has been the transformation, if any, which has occurred in that alluvial section, where there has been a cessation of deposit?

A. Well, the deposit always gravitates and passes to a certain extent with water and sinks in the ordinary clay; in other words when the soil is first deposited it is filled with a great deal of water, each grain is independent and after considerable time and pressure it becomes molded as it were into a thinner stratum or layer and sinks in common parlance. Then, besides that, we have got,—I don't know whether I ought to answer that until you are ready to ask it.

Q. What is this process, this geological process called, that you are speaking of?

A. You mean that I just now——

Q. Yes?

A. I expect that you are alluding to another process which is the result on a large scale of this smaller process. We have had throughout all time, from the earliest geological times, upheavals and subsidences, going on in various parts of the world. The subsidence has been due to the transferring of large quantities of matter by various agencies from one section of the globe to the other and putting increased weight upon another portion of the earth, and you must recall the fact that the interior of the earth is liquid and when subjected to great pressure will break forth into volcanoes, mountain ridges, etc. We find that this transference of matter causing an increased pressure at certain places has caused subsidence so gradual that the average individual never notices it, and while subsidence is going on in one part of the world an upheaval is going on in another part, and by these subsidences and upheavals we have had all the changes we have had on the globe at present. Now, it has been found in the course of study by all geologists that the entire Mississippi River coast, the coast of Louisiana around the Mississippi river, has been undergoing this subsidence ever since the discovery of this country and the rate is put down at about four to five feet a century, and all of the land around the mouth of the Mississippi river is gradually sinking at the rate of four to five feet a century, that is, the conclusion of the best geologists, unquestionably, today, it is now recognized that it is a fact and therefore we will find a great deal of the Mississippi river alluvium,

te the old original mud lumps or mud islands or deposits from the Mississippi river which once were above the soil are now beneath the clay, that occurred before the alluvium deposit, that extends from Morgan City around you may as well say to Pearl river.

Q. Does that apply to the locality along the northeastern portion of St. Bernard parish?

A. It applies to all alluvial land within the region: from Pearl river around to Morgan City, the whole coast line, I mean now, when I speak of this, I mean the subsidence of this entire country and therefore there is a great deal of land today submerged and covered by the Gulf that was originally out of water.

Q. Looking at this sample of soil marked No. 1, and being told that it came from this northeastern portion of the parish of Saint Bernard, and being told that that portion of Saint Bernard parish is south and slightly east of the mouth of Pearl river, would you state that that geological process was taking place in that locality?

A. Well, I would see no reason why it should not occur to some extent, at least, probably not as great as at the mouth of the Mississippi river where there is continued increased pressure each year by the sediment brought down, but I would say that the sinking has been the same there but not as great as out here in front.

Q. When you say out here, do you refer—

A. I refer to the mouth of the Mississippi river. And when I refer to the mouth of the Mississippi river I mean all of its mouths right immediately around here.

Q. Major H. M. Harrod testified that at Point Chicot which you will notice on map No. 6 marked with that name, some 50 years ago he saw cypress stumps just above the water, and Mr. George H. Dunbar testified yesterday that in fishing at that point he had gotten his fishing line entangled in these stumps and that in recent years these stumps are now below the surface of the water. What would that indicate to you, from a geological point of view?

A. That is what I remarked just now, that there is a subsidence of that land, it is sinking gradually, and that occurs all over this alluvial formation.

Q. If you were told that witnesses have testified that there were trees growing in this locality, years ago, amongst them, oak trees, and that now there was nothing there but the dead stumps of those trees; what would that indicate to you?

A. That would indicate to me that there is a gradual subsidence and going down under the water of this land, and the roots unquestionably died from being exposed to this salt water as would necessarily be the case if you subjected them to it.

Q. What effect would the salt water have on the roots of an oak tree?

A. It would be more pernicious than fresh water.

Q. Are you familiar with the habitation and locality of cypress stumps?

A. I might say so, because we have examined them quite frequently and made quite an extensive study of them.

Q. Would you say that cypress trees would grow with their roots exposed to the salt water of the Gulf?

A. I would say emphatically, no, not with the salt water. A brackish water they could live in, but they could not live in the salt water of the Gulf.

Q. Is this point which you will notice, Point Chicot, out in the Gulf of Mexico?

A. Yes sir; it seems so to me.

Q. If, then, there were cypress stumps at that point, what must have been the physical condition of the country at the time those cypress trees were growing trees?

A. It was comparatively dry land, high. I may remark, if you gentlemen will pardon me, I may remark right here that underneath this city at a depth of 180 to 300 feet, you will find first class living cypress stumps, every now and then we bring up a first-class specimen of cypress. I may also remark that in the same geological formation, in New Jersey, they are digging up trees of the same age as these, geologically speaking, and making good examples of them. So that is an evidence that this country has been gradually sinking ever since it began, with this accumulation of earth above on top of it as it sinks. If you go to Vicksburg and Port Hudson across the river there, you will find there where the Vicksburg & S. railroad has come way down to the river, you will find at Port Hudson crossing probably 75 or 100 immense cypress stumps standing there. The same thing occurs at Port Hudson and all along the Mississippi valley, showing that cypress trees have been growing where there was originally dry land. When I use the word dry, I don't mean absolutely dry because cypress trees don't grow on absolutely dry land, but they don't grow in the salt marsh.

Q. Are you familiar with what has occurred in the putting down of the New Orleans and Northeastern railroad out towards the Rigolets?

A. Yes sir. They have done the same thing. They have discovered out here in the construction of this railroad, quite an amount of cypress stumps, knees, etc.

Q. That were below the surface?

A. Yes sir.

Q. How far, about?

A. I do not recollect the exact depth, at some distance, I don't know that I can quote that exactly.

Q. When you stated a moment ago that there were cypress stumps 200 feet under the city of New Orleans, living, you did not mean now they were living?

A. I did not mean living, I meant in good sound condition; in other words the wood was not decayed; I used the expression living to represent that it was sound good wood, that was a slip of the

tongue, I am glad you corrected me. I would like that to be eliminated from my testimony.

Q. Have you any knowledge or experience with the effect of storms on this southern coast of Louisiana?

A. I have not had any experience, I have never been in one; but I was here in the storm of 1893, when Cheniere Caminada was so badly destroyed and when the storm was violent all the way on the coast from Morgan City over to Biloxi, and I went down and witnessed some of the effects and I experienced a little of it over here in New Orleans, we had quite a blow here.

Q. Do you know how many people were killed in Cheniere Caminada?

A. I do not know, but the newspapers put it at about 1000, I think it was somewhere between 1800 and 2000.

Q. What localities did you have occasion to inspect in order to see the results of that storm?

A. I went down the river to look at the cane fields and orange groves to see what affect it had on them. I was not studying the question geologically so much as I was agriculturally. I went down into the orange groves and saw the effect of that immense body of salt water going over them and studied the effects from that standpoint, not so much geologically as agriculturally.

Q. From the marks you saw can you approximate what depth this salt water attained over the area to which you have referred?

A. In some places it went over the tops of the orange trees.

Q. How high were the orange trees?

A. Probably 12 feet, the tallest. In one instance, I remember having my attention called to a baby that was found lodged in an orange tree in the grove, drowned, and it was taken out.

Q. Was that close to the Mississippi river?

A. It was not over from two to four acres from it, two acres perhaps from the banks of the Mississippi river. It went over the lower portion, it went over the levees and all.

Q. Will you please look at this sample marked sample No. 2, and state to what geological period it belongs?

A. Well, it is hard to tell what geological period, but it is
419 of a different origin from that entirely. This is either—

Q. What do you mean by that when you say different from that, do you mean from sample No. 1?

A. Yes sir. Sample No. 1 is true Mississippi alluvium brought down from the cultivated lands and uncultivated lands of all of these States that bound the tributaries of the Mississippi river; this is unquestionably of alluvium origin.

Q. When you say this what do you refer to?

A. No. 2 is of local origin, pure sand and is either produced by powerful streams in close proximity to where it was obtained, or by winds and waves and water; that sand has very much the appearance as you will find on the banks and shores of tidal waters, washed up by the waves.

Q. Referring to this sample No. 1, do you notice any presence of vegetable life?

A. Yes sir; there are roots all the way through that. I examined it very closely yesterday and picked out, I think I could show it to you gentlemen present in a very short while, vegetable matter even here, see there, all those are roots.

By Mr. ZACHARIE:

Q. You spoke of the scouring by the current of the Mississippi river being confined between levee banks?

A. Yes sir.

Q. Is that or not the theory of the jetties?

A. That is the theory of the jetties and that is Captain Eads' principle by which he induced the Mississippi River Commission to spend money in levees in the original instance. It was not done for the protection of the riparian owners of land at all but for the navigation of the Mississippi river, upon the principle that the scouring would keep the river channel open.

Q. Are there different characters, different kinds of silt that are brought down by the current of the Mississippi river from the upper country?

A. Decidedly; you can go and stand at low water below the mouth of Red river and you can almost tell the number of overflows that have taken place by Red river, by the sands colored represented in the banks, and showing that each tributary of the Mississippi brings down its own peculiar sediment and when you examine the banks you can see the layers almost and a geologist who has given great thought to the subject might probably even unfold the overflows of the different tributaries in the past by examining the accretions that have been laid down one upon the other in the banks of the Mississippi river.

Q. The major portion of this sediment that is brought down is discharged into the Gulf?

A. Now it is, unless there is a crevasse.

Q. Now, what is the action on this silt as soon as it meets the salt water?

A. It is deposited.

Q. Precipitated?

A. Yes sir.

Q. Is there any portion of that silt carried off by any of the currents?

A. A small quantity, as I alluded to just now which has gone to make Florida and Cuba.

Q. Is there, or not, any portion of it that goes westward by a littoral current?

A. I am unable to answer that question having never studied it.

Q. Is that, or not, the theory of the projectors of the Eads jetties?

A. I believe that Captain Eads named that as a theory.

Q. Do you know, or not, where the drift logs etc. which pass out

of the passes of the Mississippi river, go, whether to the eastward or westward?

A. I think they go westward.

Q. All of them?

A. I wouldn't like to answer that because no one has maps
420 that will show that, but I think the testimony shows they have all gone westward; they have frequently been found on the peninsula of Yucatan and in that bay there.

Q. Were you here in the State of Louisiana at the time of the Bonnet Carre crevasse?

A. No sir. I came here the year after it was closed, it was closed in 1884.

Q. Now, you know where Bonnet Carre is?

A. Yes sir.

Q. How far is it above the city of New Orleans?

A. I would say on a guess, 30 miles.

Q. Now, any silt that might have been carried through that crevasse, and those waters passing through Lake Maurepas, Lake Pontchartrain, and Lake Borgne, which are salt water lakes, would there be any probability of any of that silt reaching beyond into the gulf of Mexico or Mississippi sound, reaching this territory about which we have been talking in Saint Bernard parish?

A. There is a possibility and a probability perhaps of a small quantity, but the largest amount of that sediment was deposited in Lake Pontchartrain and filled it up very rapidly; that was one of the arguments to close the crevasse, that it was filling up Lake Pontchartrain very rapidly and destroying the fish and oysters in proximity to the lake.

Q. Was not the theory which you have just advanced, in regard to the precipitation of the silt, fresh water bearing silt meeting salt water abundantly illustrated in that case, from those observations?

A. Yes sir.

Cross-examination.

By Mr. TAYLOR:

Q. You are familiar, are you not, with the geography of this archipelago of islands lying off the east coast of Saint Bernard parish and the south coast of Mississippi?

A. Yes sir.

Q. Is it not a fact that in many portions of the world, upon many coasts, there are archipelagoes of islands; is not that one of the common features in geography and not unusual feature, the archipelago of islands along the coast; for instance such an archipelago that lies off the coast of Alaska. Are you familiar with that?

A. Not very much there, but I know what you mean.

Q. It is a very simple phenomenon of history; that there is an archipelago of islands lying off the coast?

A. I will answer by stating I have already said that there are just

such a string of islands lying from the mouth of the Mississippi river around to Mexico.

Q. And is it not a fact that there is an archipelago of islands long the coast of Cuba known as the——

A. You have gone into another thing.

Q. Just omit that?

A. These are all alluvium origin.

Q. We won't go into that. But that is a very common phenomenon in the geography of the world, an archipelago or string of islands lying off the coast?

A. Yes sir.

Q. Is it not a very familiar matter in the study of geology, the causes by which these archipelagoes are formed; the process by which such islands have been cut off from the main land?

A. Sometimes, and at others not. These on the coast of Louisiana have not been cut off; they have been formed by the waves and winds of the Gulf.

Q. We will come to that in a moment. I don't want to go into a particular case. I want to get through with the general first. Are you familiar with the geological history of Alaska and the formation of the archipelago off its coast?

A. No sir. I have several volumes about it but never had time to go through them.

Q. You never then have studied the explorations which the geologists have made of the processes through which by glacier action these deep Tiedo have been made and these islands created by the action of glaciers, which have resulted in cutting those islands off from the main land?

A. I have.

Q. That is true as a general proposition?

A. Yes sir.

Q. If you look at that coast line there, as a geographer and would go on one of these islands which were miles from the main land and could take soil from one of those islands, and then go upon the mainland and examine and see the soil was identical with the soil of the mainland, would you say, as a geographer, that one of those islands was any less an island because it had been formed by that process?

A. If it is an island, it would emphatically be an island.

Q. The mere fact of its geological origin would not affect at all the fact, from the standpoint of a geographer, that it was an island, it was miles from the coast and entirely surrounded by water?

A. Not at all. There is one explanation I want to make and that is that before we decided it was cut off by glacier action, you would have to show that the geological formation in the island and on the mainland, are identical and have the ear marks of the same cause and after effects.

Q. But, assuming now, for the sake of argument, that the geol-

ogists are right in saying that these islands here were cut off from the mainland by that process?

A. Yes sir.

Q. And we come out in a bay to one of those islands and find it at eight or ten miles from the mainland, and you, as a geologist take some of the soil and then go on the mainland and take some of the soil and find the soils identical would that be any the less an island, if it was ten miles away from the mainland entirely surrounded by water, because it was formed in that geological process?

A. No sir.

Q. It would not affect its geographical character?

A. No sir; an island is a body of land entirely surrounded by water, it is immaterial how it is made.

Q. The fact of its geological formation has got nothing to do with its geographical character?

A. No sir.

Q. Now, is it not recognized by geologists that there was a time when the British islands were a part of the mainland?

A. Yes sir. There—

Q. There was a time when you could walk dry shod all the way across what we call the English channel, that was all a part of the mainland?

A. Yes sir.

Q. The British islands are no less islands because of that geological fact as to their formation?

A. No sir. You can go a little further and can take Asia and North America, and take the Behring straits, it was all land and the Indians came to this country over that highway.

Q. So, is it not true that when it comes to determining from the standpoint of a geographer that an island is a body of land surrounded by water, the fact of its geological origin has got nothing to do with its geographical character?

A. Yes sir, that is true.

Q. Now, as I understand you, your opinion is, that this sample No. 1, which the testimony tends to show came from the Isle à Pitre, you say looking at that as a geologist examining the qualities of it, your conclusion is that that is part of the general deposit that has been made by the Mississippi river out in that direction during the same period or epoch, as to which geologists will state no time?

422 A. We won't state any length of time. But the geological time in which that was deposited is today, it is the present age.

Q. But that present age, as I understand, may embrace a period of five million years?

A. We don't know.

Q. It may be five million years?

A. Yes sir.

Q. That was in the process of formation?

A. Yes sir.

Q. Well, assuming that it was a fact, just for the sake of argument, within five million years, would the process of formation have been perceptible to the eye of any inhabitant living on or near that land, formed by a process so gradual as that?

A. I think you are making it a little more gradual than it actually occurs. For example, the Eads jetties have extended out ten miles since they began to jetty; that was about 20 or 23 years ago when they commenced to jetty. And the jetties are still continuing out every year into the Gulf, and as I remarked to you just now, the Mississippi river is bringing down an amount of sediment equal to one mile square and 360 feet high; that is the amount of sediment that has been determined by accurate and scientific data, taken up here at Carrollton under the auspices of Humphrey and Abbot in their investigation of the Mississippi river, that is perceptible, very appreciable. Now before the days of levees, this immense amount of sediment was spread over the surrounding country with every overflow instead of being carried straight out to the mouth of the Mississippi river.

Q. But, does not the illustration of the jetties to which you refer typify an upheaval and artificial process as contradistinguished from the normal and natural process?

A. So far as the place of deposit is concerned, but not as to the quantity.

Q. Are you not mistaken in saying that, for the reason that the artificial confining of the channel within a narrow limit does not necessarily produce within a jurisdiction a vastly greater deposit than could take place under normal conditions when there is no such contraction of the channel?

A. At that point, but not the quantity brought down by the Mississippi river and distributed somewhere.

Q. Do you mean to say that prior to the confining of the channel of the Mississippi river, by that artificial process, that by the natural and normal process as large an amount was brought down and deposited in that particular place?

A. Not in that particular place, but somewhere within close proximity to the stream.

Q. Is it not unfair to assume, as you do, that this deposit which takes place through the formation of this artificial channel through which the sediment is carried through the contraction made by the jetties, is it not unfair to take that as an illustration of the rapidity of the process under normal conditions in a channel which is not contracted in any such way?

A. I think, Mr. Taylor, that we both agree as to the quantity. It must be admitted that the quantity brought down by the Mississippi river within certain limits remains constant. The place of deposit is simply altered and changed by the levees. What was once spread out over the whole country is now forced by artificial conditions to one point, the mouth of the river.

Q. Do you not make by that answer a demonstration of the fact

that the deposit made under those conditions is no criterion by which to measure the ordinary normal deposit when no such artificial conditions exist?

A. At the point, again I answer at the point near the mouth of the Mississippi river, yes; but for the general land spread out over the whole country in a flood period, no. In other words, the quantity brought down by the Mississippi river today excluding the factor that I brought in just now, is the same today as it was before the levee was erected, but before it was erected it was spread out over all places wherever the water went; today it is forced by the levee system to go where we want it, that is to say near the mouth of the Mississippi river, but the same quantity is there.

Q. The object of my question is to ascertain the probable rate or rapidity of change made in the preceding periods by the operation of the Mississippi river in its deposit of alluvium. Do you still persist in your contention that the results of the artificial process which is now taking place under the operation of these jetties, is a fair criterion by which to measure the probable changes which went on before any such artificial system existed?

A. Emphatically.

Q. You persist in that?

A. Yes sir.

Q. That it is likely that it was just as rapid?

A. Bar-ing of course the small factor I brought in just now, that is why I explained. There is a greater amount of denudation today of the lands contributing to the upper Mississippi by virtue of the forests being removed by the lands going into cultivation, because cultivated lands wash much more than those occupied by forest and that small factor will of course be used by furnishing a modicum of increase to the present deposits brought down by the Mississippi river.

Q. I understood you to say that the estimate of competent geologists was that the subsidence that was going on in this locality was at the rate you said I believe of four feet a century?

A. Yes sir, about four feet.

Q. But you said that that subsidence would not be so great, for instance, in the locality of the Isle à Pitre as it would be near the mouth of the Mississippi river?

A. We have no data on Isle à Pitre, but the mouth of the Mississippi river has been accurately gauged for over a century I believe and without further study or examination in detail I would state that perhaps all of the shore line from Pearl river around to the Atchafalaya has undergone to a very large extent this same change and while we have reason to believe that; on account of this increased pressure due to the increased amount of sediment brought down every year and deposited near the mouth of the Mississippi river that particular locality may have sunk a little bit more than that surrounding it that has not been subjected to that pressure.

Q. The probability is that the subsidence in the locality of Isle à Pitre would be less?

A. Very scantily less just a mere fraction less, because, I will have to deal with generalities here, the amount of time that has been needed and the amount of mud that has been brought down and that fact you gentlemen will realize when I tell you that in digging wells in this city they have gone through 1800 feet of this alluvium deposit without going through it, when you imagine that this embayment of the Mississippi has been going on sufficiently long to fill this deep area with 1800 feet of mud brought down by the Mississippi you can see that the factor of pressure which I allude to at the mouth of the Mississippi river will be infinitesimal in its difference between the mouth of the river and that — Isle à Pitre.

Q. Look at this map and examine it and see the general geographical formation along this coast from Nine Mile bayou eastward to the Isle à Pitre, and then southward through Nine Mile bayou to Treasure bay, Indian Mound bay down to lake of the mound; have you reason to believe that since 1812 there has been any material change in the general physical and geographical aspects of that region?

A. I would say so, yes; for this reason, I would say that this has undergone the same subsidence as the remaining part of the Mississippi coast and that many points that were formerly islands are now submerged.

Q. That is, you speak of this general subsidence of about four feet per century?

A. Yes sir.

Q. Have you any reason to believe that any general change in the physical and geographical aspect of the area to which I have referred has taken place except such as would result from that subsidence?

A. I do not know of any other.

Q. Except the inference that you draw from the general operation of that subsidence? then——

A. That is all.

Q. You know of no reason to suppose there has been any general change of appearance in the physical aspect of the region I have indicated from 1812 down to this date?

A. That is right.

By Mr. McClurg:

Your statement as to the subsidence at the rate of about four feet per century, I believe you also stated that the alluvium or accretion was about at the same rate, did you not?

No sir; on the contrary, the accretions are going out further into the Gulf every year; not the accretions laid one upon the other, but has stopped long ago in all the parishes by virtue of our

Q. I meant to ask you, on general principles, not with reference to any particular—

A. There is a prolongation of the alluvium deposit out into the Gulf, but I would not call it accretions because perhaps that word would not be fitly used.

Q. You spoke of the scouring of the River Mississippi and of these deposits. Is it not true that your doctrine is disputed by a great many scientists and statesmen on that subject?

A. Not altogether, there are a great many men like Captain Leathers and I believe Captain Cowden who claim that we do not keep the river in a navigable condition and that the river bottom gradually and slowly fills up as we elevate the levees; but I think they do not deny the process of scouring to some extent, because we find the channel of the river is constantly shifting. We frequently find a sand bar here today and gone tomorrow.

Q. That is due to the violence of the river, the sudden changes in the bed?

A. Not necessarily, it depends, a log—

Q. Let us come back to the point. Is it not true that a great many scientists and statesmen contend, upon high authority that the leveeing of the Mississippi river does not produce a scouring of its bottom and a deepening of its channel, but has the effect of filling the bottom and lessening the depth of the river in proportion to the restricting of the waters of the river by levees?

A. I will answer that question by referring you, with all due respect, to the Mississippi River Commission reports and also to various reports that have been sent to Congress from the other side. It is unquestionably a disputed question and discussed a great deal and therefore I give you Captain Eads' theory and give you the testimony of the Mississippi River Commission which has extended now about 20 years and that commission assures us from the standpoint of science that it is a fact that this leveeing is scouring the river and keeping it clean. If we have any reliance on the Mississippi River Commission we will accept their published reports which are to that effect. I will refer you to the last one.

Q. After all there is some dispute of that theory?

A. Always will be; we never expect to find humanity of the same opinion.

Q. How far is Point Chico, if you know, from the Mississippi shore?

A. I do not know sir. I would have to measure it.

Q. Your best judgment from the map?

A. I am not sufficiently acquainted with the scale of this map to express an opinion. That is simply a question of measurement. I have no personal knowledge of it at all. I would have to judge by the map.

425 Q. I want to get your judgment on this proposition. If I understand it correctly your statement that this subsidence is at the rate of four feet per century is a general one?

A. Generally accepted by geologists.

Q. I mean that is the average subsidence?

A. Of the embayment of the Mississippi river, yes.

Q. Of course it may be greater at some points and less at others?

A. Well, within a very small limit.

Q. Give us, please, your estimate of what that subsidence would be since 1812, for 18 miles south of the mouth of Pearl river?

A. I have no personal knowledge of that. I would just have to answer you like I did before, that I would only *except* the theory of the geologists who have studied this subject, and would expect to find a proportion of four feet as that time bears to a century.

Q. The discoveries of these cypress stumps and timbers under the surface indicate, both subsidence and filling do they not?

A. It depends altogether on whether the stumps are found in places without the stumps being covered with dirt, it filled in there, whether the stumps are covered or not with dirt, like at Vicksburg, they are covered there; but we have on the coast here a number of cypress stumps that are just in almost identically the same relation to roots, still, as they were when they were growing, therefore that clearly a case of subsidence.

Q. May they not be filled in and covered without being shaken?

A. Their roots though, their little roots beneath have still just the relation as exists between soil and roots as exists today in the stumps.

Q. I meant to ask you this. If we find cypress knees or stumps under the surface—

Under the surface of water?

Of soil. Can the geologist say whether—

No sir.
—they hold their position differently, where there has been natural subsidence, from the position they would hold if there were an accretion or covering up?
I would say certainly there had been an accretion, a subsidence could not be predicated upon such premise.

Redirect examination.

By Judge GIBBS:

If you should find cypress stumps rooted in the soil below tide level would you state that there had been a subsidence of the soil at that point, or that these stumps had been covered by alluvium?

If I understand you right, they are not covered now by alluvium.
I am speaking of stumps now covered by the soil. If you by digging down into the soil find a number of cypress stumps rooted in the soil at a depth below tide level, would you state that the point at which these stumps were discovered had subsided?

Would if you were to discover them below tide level.

Q. That is what I asked you; whether if you found them below tide level?

A. Yes sir.

Q. In digging the soil, you say that would be an evidence of subsidence?

A. That's right.

Recross-examination.

By Mr. McCLURG:

Q. The accretion by alluvium has no effect, as I understand you, upon tide level?

A. I think I can make myself clearly understood by a round about way. If there is an accretion around a stump as it grew, that stump with all its accretions would be above the ordinary tide level because a cypress stump could not grow in tidal waters; if, on the other hand there was an accretion and I discovered afterwards that this stump with accretions was below tide water, I would say there has been an accretion and subsidence because the tree is now below tide water which according to our knowledge of cypress is impossible to grow in that condition and hence must have sunk. I think that brings it out clearly for both of them.

By Mr. DYMOND:

Q. Taking this section of the country forming the northeast corner of this Saint Bernard peninsula and considering its origin and formation, recognizing that it is now a little above tide level, what would be the general effect after the levee system had been completed, say between 1750 and 1800, what would be the effect subsequent to that date, 1800, produced by storms, rains and subsidence in that section on its general topography and superficial appearance?

A. It would modify it very greatly.

Q. In what way?

A. By forming new bayous, washing down some of the higher grades, and as I remarked just now, by a subsidence to some extent. The appearance of the whole geography of that country may have modified in that time very materially, fresh outlets for drainage, denudation by tidal waves, by the waves that form very high during storms, etc., washing over these lands, and another important factor that is omitted is a growth of vegetable matter on these lands, that modifies to some extent the geography of an archipelago similar to that.

Q. Referring to this particular territory and considering the period of less than 100 years or since, say 1812, considering this particular peninsula in question, since the levee system was completed and the alluvium deposit terminated, is it your opinion there have

have not been great changes produced by the elements and causes you have mentioned?

A. I would not like to use the word great; but unquestionably, there have been changes, how great, I would not like to emphasize them by that word, but there is no doubt *it* at all there have been changes, so much so that comparing a detail map of it at that time with a detail map of it today, one would scarcely recognize it in all its details.

Q. Now, where vegetation has been able to maintain itself, does it does not that have a tendency to keep that particular spot above the surface of the water?

A. Yes sir. The peat bogs of Ireland are many feet thick produced by continuous growths on top of former growths, and similar conditions are produced in that way in a great many of our alluvium formations; we have some bogs in the back part of this city built up almost exclusively by a process similar to the one just described in Ireland, showing the existence of the process of vegetation growing on vegetation and making an immense amount of vegetable matter elevating the soil by that growth.

By Mr. ZACHARIE :

Q. In regard to the scouring or not scouring by contraction of the Mississippi river or other streams, what is the consensus of opinion of the highest scientific authorities on that subject?

A. Nearly all the information we have comes from the Mississippi River Commission which, as you know, is composed of United States engineers, and in their published reports which are made annually, they make the assertion that the levees are valuable adjuncts to the navigation of the Mississippi river by keeping the bottom well cleared and opened for navigation.

Q. Are Humphrey and Abbot high authorities?

A. They are the very best authorities up to a generation ago.

Q. How are European scientific authorities on this subject in connection with other streams; for instance do you know about the writings of the president of the Physical and Geographical Society Recluse?

A. No sir.

Q. Can you state what the consensus of opinion of the European scientists is in regard to European rivers, in this respect?

A. I can only in one statement perhaps answer your question, and that is that all rivers that are subject to overflow are today freed, all over the world.

Q. Do you know what the results have been with the Danube and the Po?

A. Yes sir; they have continued to build higher levees.

Q. As to scouring I mean?

A. Well, I would say there is some contention about the Po and the Danube just along the same line as regards the Mississippi, but

the best engineers continue to build the levees there and maintain them, so that it is accepted as a fact that they are doing the work.

Q. Can you mention a single eminent scientist who maintains the contrary?

A. With your consent I would rather not go into that because I have got some personal friends that are on the other side. I do not like to answer that question.

Q. Is that the theory that the United States Government is now going on?

A. It is.

Q. You have spoken of the effects of storms upon low lying territory and this archipelago or peninsula which is involved in this suit. What would be the probable effect of these storms acting upon the character of the soil of which sample No. 1 is a specimen, as compared with other soils?

A. It has been found that this Mississippi mud, alluvium, probably offers more resistance to the water than any other soil we have, hence it is used almost exclusively for building levees. Wave wash is not so great upon a soil of the character of No. 1 as on No. 2, No. 2 constitutes the sand which is constantly shifting, subject to tidal waves, subject to winds and subject to running streams.

Q. While this material is placed upon levees and dries it makes good levees, does it not?

A. Yes sir.

Q. How is it when it is in its wet condition, is it soluble?

A. It is easily transported by water by virtue of the fact that its physical size is very minute, consisting mainly of clay and silt it is easily transported by water; in other words, it is very nearly of the same specific gravity as water, and hence it is very difficult to settle it.

By Judge GUION:

Q. Are you able to state whether the marsh lands out in what is called the Louisiana marshes, claimed by Louisiana as belonging to the parish of Saint Bernard, are of the same character as the marsh lands of Terrebonne parish and Lafourche parish and other parishes on the southern coast of Louisiana?

A. It is my belief they are identical.

By Mr. McCLURG:

Q. The subsidence of the surface that we have been talking about is going on with the bottom of the Mississippi sound at the same rate is it not?

A. Yes sir.

Q. Being above water makes no difference?

A. No sir.

Q. The subsidence of the land under the water is at the same rate as the subsidence of the land above water?

A. Yes sir.

ROBERT R. BARROW, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

428 Direct examination.

By Judge GUION:

Q. Where do you live?

A. I live in Terrebonne parish.

Q. Do you know anything about the southern coast of Terrebonne parish?

A. Well, yes, I know something of it.

Q. How long have you known it?

A. From my boyhood up.

Q. How old are you?

A. I am 44 years old.

Q. For how many years, then, have you known that southern coast of Terrebonne parish?

A. As far back as I can remember; I suppose when I was ten or 12 years old my first acquaintance began with it.

Q. Have you been in the habit of going out there frequently or infrequently?

A. Frequently.

Q. For how many years have you visited that section?

A. How many years have I visited it?

Q. Yes, for how many years have you visited it?

A. Since that time up to now, I very frequently go over there still.

Q. For what purpose?

A. For different purposes, for pleasure, sometimes on business.

Q. What business have you down there?

A. I am interested in a canal opposite New Orleans.

Q. What is the name of that canal.

A. The Barrataria and Lafourche canal.

Q. What does the Barrataria and Lafourche canal connect?

A. It connects with all those waters.

Q. Connects what?

A. Connects with the Mississippi river at this end and with the lakes, bays and bayous in the rear.

Q. Extending to what point?

A. Extending all the way down, you may say they connect one with the other going all the way down.

Q. During the time you have visited the southern coast of Terrebonne parish, have you noticed any changes in the configuration of that country?

A. Yes sir, I notice them each year, every time you go down there you notice a slight change of some kind.

Q. What is the kind of change you refer to?

A. The washing away of the land, widening of the bayous and the making of inland bays and all that sort of thing.

Q. Caused by what?

A. By the action of the water, possibly by storms, possibly by currents, various causes.

Q. Is there any instance in your recollection of the cutting in of the marsh land?

A. Decidedly, yes sir.

Q. At points where there was no inlet?

A. Yes sir.

Q. Could you name some of the places that you remember?

A. I do not know that I could name them by name there are so many and such peculiar names, each fellow names a bay if he discovers it first, some name strikes him as a good name for it, but there are lots of instances where they are cut out, channels are made, and after a storm I know back of Bayou Terrebonne, right close to the land, several little bays have been eaten out by the storm where there was no bay at all.

Q. What was it before?

A. Marsh.

Q. What became of the marsh?

A. I don't know, the marsh went away and the bays took its place. Whether it was washed away on to the main land or what became of it I don't know, it went away.

Q. What kind of marsh was that?

429 A. It was ordinary sea marsh.

Q. Was it anything like sample No. 1?

A. It is regular turf, yes sir, it is something similar to that.

Q. Is it to your knowledge that any part of that kind of marsh is ever taken up bodily and carried out to the sea or disappears in a body?

A. No—yes, I have known islands to disappear but I don't know what became of them, whether they went off by pieces, I am very sure that some of it goes off by pieces, but I don't know that the whole island goes off in one piece and lodges in one place.

Q. I was referring to the marsh.

A. Yes sir, it is cut up in places and goes off in chunks and washes away where the current strikes it.

Q. And carried off?

A. Carried away.

Q. Do you know of any instances where there have been any islands forming in the marsh?

A. What do we understand by islands, high land?

Q. Whether the marsh, or otherwise, a body of land surrounded by water whether large or small?

A. No, I do not recall to mind anything of that sort; it is to the contrary.

Q. You say it is just to the contrary?

A. Yes sir.

Q. What is the condition that you speak of as being to the contrary?

A. Well, they are washing away all the time, these marshes, by the action of the water, you know a fellow goes along in a pirogue and cuts a channel to go from one bay to the other, and by the washing away continually of the land in those places first thing you know there is a great big bay there.

Q. You say that it is to your knowledge that within the period referred to there has been a cutting out of the marsh land?

A. Decidedly.

Q. And the formation of what in those places of what was marsh?

A. Well, bays and streams. Now, for instance, for example, we will say right in Cat Island lake or they call it Coon Island lake there was an island down there between Caillou island and the main land, there are two islands there, one is called Cat and the other one is called Coon; originally old fishermen around there tell me it was one island at one time; but to my knowledge I can remember at one time when there was only a small passageway between them, not over half a mile wide or something like that and today, why, there is a mile or so between them, and the same thing occurred between Wine island and Caillou island, that was a little small pass in there, you could see one island from the other very well, and today you can scarcely see one island from the other because the pass has widened so much.

Q. And that condition of things is also taking place in the marshes?

A. Yes sir, all the way around there.

Q. Do you know where Rome island is?

A. I don't remember Rome island.

Q. Do you know Caillou island; what is the condition of Caillou island today as compared with what it was some years ago?

A. I know the place where the old hotel was and the buildings now right in the Gulf.

Q. There is where there was a hotel?

A. Yes sir, a hotel and buildings belonging to it.

Q. How long ago was that? That there was a hotel there?

A. I could not say when that hotel was destroyed, there was a fair down there, and—

Q. Did Mr. Vigourie build that hotel?

A. I don't know who built it, but he was the proprietor when I saw it.

Q. For how long was it kept open?

A. For a good many years.

Q. And you say the place where the hotel was—

A. Is now in the pass, in the water.

Q. Do you know where Last island is?

30 A. Yes sir.

Q. Could you say anything with reference to its condition today as compared with what it was some years ago?

A. There has been a great deal of cutting away there since I first saw it, it has been cut through in two or three places, two or three

channels pass through the island today and I can remember when there was no channel there.

Q. You speak of the cutting in of the marsh by water coming in there and bays forming in the marsh?

A. Yes sir.

Q. Are you able to state whether or not these bays that have been cut in there have resulted in the formation of islands between them in any way?

A. Certainly; if there is a bay on the island and somebody comes along and cuts a little channel, why, by the action of the storms the simply fact of the water rushing into the place and rushing out scours as it goes in and out and that action of the water will widen that place, deepening the water and the marsh will fall in and be carried off by the current and there are lots of places like that, in fact you will find all over this marsh little islands formed that were not there when you came over there, possibly in a couple of weeks time, there will be a storm come and cut off a little chunk and there is a little island formed and that continues to be eaten away until there is no more of it.

Q. Is that condition of things going on constantly down in the parish of Terrebonne?

A. Yes sir.

Q. You say that you are at the head of the Barrataria and Lafourche Canal Company?

A. Yes sir.

Q. It is under your supervision and control?

A. Yes sir.

Q. Have you had occasion lately to do any work on that canal?

A. Yes sir.

Q. What kind of work?

A. I built a new lock there.

Q. In order to do so what did you do?

A. I had to excavate to cut this lock through.

Q. Where did you excavate?

A. I had to dam off the river from one side and the waters from behind in order to excavate between the two.

Q. What distance was there between the dam you built next to the river and the one that you built next to the canal proper which extends out into Lake what?

A. Lake Salvador. Let us see, the dam at the river was put, the front cuts we used as a dam at the river, we made the dam out of the front cuts, and the distance between those two may have been 135 and the distance between the other two might have been 176, the dam was behind that about four or five feet, something like that, just add those two together and that will give you the distance between.

Q. What was the space in between that you had to cut off for the purpose of excavation?

A. Well, it was a space——

Q. Did you do any excavation?

A. Yes sir.

Q. For what purpose?

A. For putting down the foundation.

Q. How deep did you go?

A. I went down between 11 and 12 feet.

Q. Below tide level?

A. Yes sir.

Q. How do you know that fact?

A. Because I figured on tide level.

Q. Did you have any visible tide level at the canal?

A. I had this dam which was eight feet wide between the work I was doing and the tide level of the back country, the tide
431 rose and fell every day right behind this dam.

Q. Did you excavate below that tide level?

A. Yes sir; that is what we figured on, to go below tide level and we went down 12 or 12½ feet below tide level.

Q. What did you find there at that depth?

By Mr. McCURD:

Q. I want to know whether you went down 12 feet below the tide level or below the surface?

A. Below tide level; we figured on low tide for the boats to pass over the sill of the gates consequently we figured on what we supposed to be low tide level which was the tide right behind us that came to us, within 8 feet, between——

Q. You could notice the ebb and flow of the tide?

A. Yes sir.

Q. How deep below tide level did you go?

A. About 12 feet.

Q. What did you find, did you find any stumps?

A. Lots of them.

Q. What kind?

A. Cypress stumps.

Q. Were these stumps rooted in the soil?

A. Yes sir, they grew there. There was a forest, a perfect layer, not only did we find stumps but we found a layer there such as you will find in woodland timber, the character of the timber, just as though it was a carpet, about ten to 11 feet, where we struck this layer. We found branches cut a peculiar size, branches laid down and then these stumps below all laid in there just like a cypress tree would grow.

Q. How far below the level of the land you say you saw this a certain distance below tide level, now——

A. It would be hard to say that because, the banks were filled up by the excavations you see, we threw it on the banks and the banks were very much higher than the level of the land; but I presume about, I won't be positive, about it, but I think about seven or eight

feet is the water level below the actual bank, the bank of the river; I should judge it would be about that much then.

Q. Then you went somewhere about 20 feet down?

A. Yes sir.

Q. Below the surface of the soil?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. How long is that canal?

A. It is a canal that connects the different streams and lakes and bayous with Morgan City, with the Atchafalaya river.

Q. How far is that from New Orleans?

A. About 108 miles, Morgan City is.

Q. That is on the Gulf coast?

A. Practically on the Gulf coast.

Q. If there is a subsidence of the land at the rate of four feet a century, how long will it be before you will have no need for that canal?

A. I have not troubled myself about that as I don't expect to be here then.

Q. You spoke about these cypress stumps and trees ten or 12 and 20 feet below tide level?

A. Yes sir.

Q. It has been testified here, you know, that the tide level rises as the earth sinks and also that there is a raising of the surface by deposit from the overflow of the Mississippi river?

A. Yes sir.

Q. Do not these deposits from these overflows resist the flows of the tide the same as they do in other waters?

432 A. Yes sir. They would do that if they were banked up to do so, with the formation of the bank.

Q. If the silt, sediment, and alluvium from the Mississippi river is banked up along the Gulf coast it would resist and stop the flow of the tide and raise the level of the tide just like it would do that in other waters would it not?

A. I don't know that it would raise the level of the tide, but with a formation like a levee formed by these deposits it would keep the inflow of the tide from coming in provided the embankment was high enough.

Q. If it was possible to levee the Gulf and restrict and resist the flow of the tide, it would raise the level of it, would it not?

A. The level of the tide?

Q. Yes?

A. I don't know that it would, I don't see that it would. The tide that we have here is affected by the Atlantic ocean and its connecting waters, it is out of the Gulf that we get our tide from and by keeping it out I do not see that it would raise the tide.

Q. You do not think that the tide would be raised, whether it would have a wide area to overflow or narrow?

A. I suppose if it was confined within a small space and the water rushed in it would raise it possibly a little.

Q. I want to find out if it be a fact, as has been testified to here by a gentleman, that the earth is sinking in this section especially at the mouth of the river, at the rate of four feet a century, if there is not some recompense in this immediate section by deposits from overflows?

A. Well, I think so, I think that this coast is sinking and the best evidence in the world that I have of it is the changes what I have testified to in regard to those stumps; we know that cypress stumps do not grow in salt water and these cypress stumps were found ten feet underneath the level of the tide water with a simple dam of eight feet damming out—between this excavation and the tide water which is brackish water, salt water right behind the dam, eight feet separating the two; there is a rise and fall of this water showing there what was tide level. I noticed that not only for one or two days but for a period of several months, because it took me that long to get through this excavation, and to illustrate this I will explain like, this table say would be the dam, on this side of the table would be the salt water connecting streams that connect with the lakes and Gulf below; on the other side, over here, we are down 12 feet lower than this water over here; now, if that is tide level and these stumps grew here which there were not one but a great many of them showing it was a forest there; if they grew there, had the salt water been as high as it was at this time over here it was not likely they would have grown there because we know that they do not grow in salt water, of course therefore I jumped at the conclusion it must have been fresh water when they grew there, and the question is if they had not sunk why is it the salt water is higher here than there.

Q. Let us accept that conclusion as accurate. How long do you think it would have taken to have created those changes?

A. I know of no way of figuring that out and it would be a large element of doubt in my mind—

Q. It would take many centuries, would it not?

A. It would take a good while.

Q. A long time before 1812?

A. I don't know how long it took nor what could have brought it about, it may have been an earthquake that shook this country.

Q. You never heard of any violent earthquake since 1812?

A. No sir.

Q. You don't know—

A. Consequently it would be out of the question for me to figure on it.

Q. You don't know about the conditions that existed about 1812?

A. No sir.

433 Q. You are on the west coast of Louisiana?

A. Yes sir.

Q. You do not undertake to say or profess to know anything about the conditions on the eastern coast of Louisiana from the mouth of Pearl river 18 miles south?

A. No sir.

Q. Do you know anything about the deep water channel out of the mouth of Pearl river north of Half Moon island, Cat island and east of Chandeleur islands?

A. No sir.

Q. Have you any idea of the distance from the mouth of Pearl river by what Louisiana claims to be the deep water channel eastward from the mouth of Pearl river through Cat Island channel and to the east of Chandeleur island around to the Sabine river that divides Louisiana from Texas; what is your judgment as to that distance?

A. I don't know, I have not studied that up and I don't know things I have not studied, I couldn't tell you, it would be a hard matter unless you take a map and figure it out and then you would have to go by somebody else's estimate.

Q. Estimate it in your own judgment; you are familiar with—

A. It would be simply a case of guess; if I were to tell you ten thousand miles it would be just the same, I would have nothing to base it on, it would be just an idea; I would have to figure how wide I thought the State of Louisiana was, and you see the distance would be different if you take it one way and then another, it would depend on how you take it, if you went around by the outside it would be longer than if you went straight through the State, this State is shaped like a boot.

A. The line I want you to draw now is, go out of the mouth of Pearl river and follow what Louisiana claims to be the deep water channel, goes south of Cat island and east of Chandeleur islands and swings around the mouth of the Mississippi river around to the Sabine river; I would like to get your estimate if you can give us one that you think would be of any value, what that distance is, in order to show what water frontage Louisiana would have?

A. Well, if I were to answer that question I could only do so by guessing, I wouldn't have anything to go on that would be of any value as evidence in the matter, it would be just simply guess work.

Q. I do not think with that statement it would be worth much. I thought perhaps in your business with that canal—

A. I do not go that far east of the Mississippi; I have never been out on that coast so I am perfectly ignorant of it.

Q. East of the Mississippi river you don't know anything about the conditions?

A. No sir; the only way I have been there is by train.

Redirect examination.

By Judge GUION :

Q. You have not told us where that Barrataria and Lafourche canal is ; you said——

A. It starts right opposite Audubon park in the city of New Orleans, right on the opposite side of the river from Audubon park in the city of New Orleans.

By Mr. McCLURG :

Q. Is there any perceptible difference in the depth of the water here at this end of the canal ?

A. Than the other portions of it ?

Q. No, not the other portions of it, but the rise or fall of the depth of water at this end of the canal, whether——

A. I don't think I exactly understand the question.

Q. I mean to say and so you may fully understand it I will put this way. You have testified, in substance, that there has been a subsidence of the land out to the west, and that certain

islands have disappeared and that the waters have made inroads on the inland or main land ?

A. Yes sir.

Q. I want to ask you if those influences that have created those conditions down there, have had any material effect on this end of your canal, whether your water has grown deeper or shallower ?

A. I don't know that I would be prepared to say whether the water at this end has become shallower or not because we are constantly dredging and if there was any difference why we would scarcely notice it.

Q. Does not the bottom of your canal sink at the same rate as the surface does ?

A. It may but the water from the Mississippi river bringing in its deposit which we let through the locks possibly offsets that.

Q. Interfering with it by artificial means ?

A. It might be.

JAMES C. HOUGH, witness sworn and examined on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND :

Q. Where do you live ?

A. New Orleans.

Q. What is your present profession ?

A. Civil engineer.

Q. How long have you been a civil engineer ?

A. Twenty years.

Q. How old a man are you ?

A. I am forty-nine.

Q. Are you connected with any railroad now ?

A. I am connected with the New Orleans and Northeastern railroad.

Q. What is your official title ?

A. Resident engineer; as such I have charge of the physical features of the road.

Q. Where does that railroad run ?

A. From New Orleans to Meridian, Miss.

Q. Does it skirt the southern shore of Lake Pontchartrain at any point.

A. It skirts the southern shore of Lake Pontchartrain for a distance of 13 miles, about, and then crosses Lake Pontchartrain and crosses the marsh for two miles more.

Q. What is the general character of this section of the country over which it goes ?

A. It is marsh land.

Q. I refer now to the Louisiana side of it.

A. I mean along Lake Pontchartrain, crossing it, and two miles on the opposite shore, it is all marsh land. We have filled in all of the marsh land, the marsh that is way back and low that you couldn't walk it, to the height of the marsh that is higher.

Q. Are you at all familiar with the character of the marsh forming the peninsula of the parish of Saint Bernard commonly called the Louisiana marshes ?

A. Only from a little travel by rail and a little travel by boat.

Q. Is that the same character of land as that through which your railroad traverses on the southern coast of Lake Pontchartrain ?

A. In general appearance it is; it is marsh land, about, probably from marsh that is barely above sea level to marsh land two feet higher, interspersed with numerous lakes and bays.

Q. Will you look at this map marked map No. 6 and state if this line extending from the city of New Orleans along the southern shore of Lake Pontchartrain and marked the New Orleans and Northeastern railroad, is the line that you have reference to ?

A. Yes sir, going out from People's canal and then skirting
435 the shore of the lake crossing the lake near Point aux Herbes.

Q. What was the original means of communication by railroad, so far as the road bed was concerned, along that southern shore of Lake Pontchartrain ?

A. Two miles of the shore, on the north shore, and six miles of the lake and down to this curved point, it was original- all trestle, 21½ miles of trestle work, originally. The curved point is at People's Avenue canal as shown on the map.

Q. What is it now ?

A. It is now all embankment except six miles across Lake Pontchartrain.

Q. How was it changed from trestle to embankment ?

A. The two miles on the north shore of Lake Pontchartrain were filled by material hauled in there and dumped there.

Q. What about on the south shore of Lake Pontchartrain?

A. About 11 miles of the south shore beginning at Point aux Herbes and extending 11 miles along the shore to New Orleans, was filled by excavations, cutting out by dredges.

Q. In order to get this material, did you construct a canal running parallel and alongside of the trestle work?

A. Yes sir. The canal is about 11 miles long.

Q. And how wide?

A. 78 feet wide.

Q. And how deep?

A. It varies in depth, in places we dug a little deeper than others; the greatest depth the dredge would go would be about 13 feet. The dredge was so arranged it would lower and go back a second time and make a second cut in the same place, the places where we got very poor material; other places where we got better material we didn't have to go so deep.

Q. Was this dredging under your supervision?

A. Yes sir.

Q. Did you, in the course of your excavation of that canal, come across any cypress stumps?

A. That portion from where the road reaches the shore near Point aux Herbes, for a distance of about six miles towards New Orleans, was largely of cypress stumps and vegetable muck.

Q. How much below tide level did you find those cypress stumps?

A. That portion of the marsh is about a foot above Lake Pontchartrain at normal tide in the lake, and the first dredge was about—the machinery was set for about eight feet. There was no appearance on the surface of the ground, whatever of the stumps. I would say that, to the best of my recollection that the top of those stumps would be three or four feet below the surface of the marsh and say three feet below the normal surface of the lake.

Q. Three feet below tide level?

A. Yes sir, that would be the top of the stumps, and then from there down to the bottom would be five or six feet.

Q. What was the position of those stumps?

A. The way they came up with the dredge, showed they were about in the normal position of stumps in the ground with the trees cut off, that is, upright, that is, in an upright position.

Q. Were those stumps rooted into the ground?

A. The roots and all came up with the stumps; the material that they were—was a very soft, smooth slick blue mud.

Q. From your observation had those trees grown in the position in which you found them?

A. I would think they had from the upright position they were in as they were dredged out.

Q. Have you in any other work noticed any evidence of stumps or other surface formation below the present sea level?

A. Frequently through that same stretch along which we dredged. During the construction of the trestle the piles would hit obstructions and it was generally considered by all connected with the work that they struck stumps or logs; this would be in places from five to ten feet below the surface of the water; if you hit something it displaces your pile one way or the other, and offers resistance to the pile penetrating, and we concluded it was logs or stumps.

Q. Was this verified when you subsequently dug the canal?

A. The dredging of the canal subsequently verified that supposition of the presence of stumps in the ground.

Q. Have you had any experience with the effect of storms on your railroad?

A. The New Orleans and Northeastern road bed, when the trestle was driven, was located generally from three hundred to something over, feet, not less than 300 feet, from the shore line. That is, there was a general marsh ground extending from the center of the track at least 300 feet towards the shore of the lake; in a great many places, say for a distance of six miles, since 1882, the railroad company has driven pile protection located at a distance of 50 feet from the track, the shore line having eaten to that point in 20 years; in fact the shore line the south point, Point aux Herbes, has receded 1000 or more feet at the point, from what it was in 1882.

Q. What has produced this change and washing away of the shore line?

A. Constant lapping of the waves along the shore line and several severe storms like the storm of 1893 and the storm of August three years ago, that Cheniere Caminada storm did a great deal of damage.

Q. How did the storm affect the road?

A. We were cut in two for a week. The marsh land that was between the railroad embankment and the edge of the shore was taken out in a great many places; another embankment was cut through by the storm waves.

Q. Were you present during any period of these storms?

A. I was present in October 1893 and I was away in the August storm three years ago, but was back before all the repairs were made and saw the effect of both storms.

Q. What did you see during those storms, so far as the damaging effects of the storm were concerned?

A. In the two days or more that the storm prevailed we lost in an hour's time 50 feet or more of the marsh between the railroad and the lake, in other words it would eat the shore marsh between the railroad and the lake from 50 feet up, cut it right up, leave water where land used to be.

Q. What was the size of the waves?

A. They broke six or seven feet high, came right over the top of these pilings. Those storms that do the most damage are the northwest gales after the southeast gales blow the water in the lake.

- Q. Is that the water that has been piled up by the east winds?
- A. Yes sir, the water from the east winds comes into the lake from the sea and then after that, after the east gales blow for several days wind whips around to the northwest and that piles the water on the south shore.
- Q. Would that same effect be produced on the south shore of Mississippi sound, by the influence of the north winds on the waters of Mississippi sound?
- A. I assume that in the marsh below there are the same conditions of soil and affected by the same conditions of wind and waves, the result would be the same. At this point on the map, at Point Herbes, some distance in from the shore line, exists what they call the big lagoon. In 1882 there were several hundred feet of water between the edge of the lagoon and the shore of the lake; now there is not 20 feet; in other words the lake has cut in here and made the lagoon part of Lake Pontchartrain.
- Q. Will you look at this sample of soil marked sample No. 1, and tell me whether it is similar to the soil along where you were constructing this canal?
- A. Yes sir. We have soil similar to that and some like Mississippi sand, some gum-iness in it.
- Q. When you say Mississippi you mean Mississippi river?
- A. Yes sir, Mississippi River formation and some vegetable matter.
- Q. If the soil were of this character along the south shore of Mississippi sound, do I understand it to be your opinion that the same results would be produced on the south shore of Mississippi sound as were under your personal observation produced on the north shore of Lake Pontchartrain?
- A. Unquestionably, any such material as that, subjected to those terrible storms and waves, would wholly disappear.

Cross-examination.

By Mr. McCLURG:

- Q. Those storms would affect almost any kind of soil would they not?
- A. Yes sir; it would take very firm material to withstand them, most of rock nature to thoroughly withstand them and that would be slightly.
- Q. From your personal experience and observation and from all the information you may have by tradition or otherwise, how long would you say that it has been since these cypress stumps and trees stood erect above the surface of the earth?
- A. That would be based on the subsidence of the soil.
- Q. I will make my question so you may answer it in your own words.
- A. Of course you do not undertake to testify as a geologist?
- Q. No sir. Only as to the conditions we found around there. As to any subsidence I can't say a word as to whether that shore of

Lake Pontchartrain and this country in here has subsided any since 1882. But the fact does remain that we found those cypress stumps below the surface of the ground, the tops of them being several feet below the surface, and the balance would be several feet further down, upright in position. The roots would be in the bottom of the dredge, in the bottom of the bucket, the roots would be in the remainder of the stump, in the bottom of the bucket.

Q. How long they had been covered you have no idea?

A. I have no way of calculating that whatever. They were all decayed and a few weeks or a month or two exposed to the atmosphere, rot and disintegrate very fast.

Q. I am speaking of stumps; do I understand you to mean that they are cypress trees that have been cut away by human agencies?

A. I would not say how they were cut. They came up in that broken up condition; some of them were so big that we had to work at a stump and log, dredge and cut, two or three times.

Q. Could you tell whether the tops had been cut away or not?

A. No sir.

Q. You could discover the difference between cuts of large trees and what we usually term stumps?

A. Yes sir.

Q. You found logs?

A. We hit logs occasionally. They would lie obliquely across the canal. We also dredged three miles of canal from People's canal in an easterly direction along the Florida Walk canal and the same cypress stump conditions were there under the ground.

Q. If there had been a subsidence of the land in that section at the rate of four feet to the century, about how long would you estimate it to be since those trees stood high and dry on the earth?

A. Well, the tops of the stumps were about three feet under the surface, from the top of the stump to the bottom of it would be about four feet, that would make the roots about eight or ten feet below.

Q. I understood you to say there were some deeper down?

A. Yes sir; some stumps were lower down, as well as at that same depth; in other words all the stumps were not on the same level.

Q. Could you say whether those stumps were not on the same strata or not?

A. Yes sir; we evidently went through the strata in which
438 the trees grew which was a very slick, slime of blue clay; we cut through that and we hit firmer material more like the Mississippi River batture sand.

Q. Then you struck other stumps?

A. Then we were out of the stumps; in other words the excavations of the ground for a height of a foot or more was more or less of vegetable matter, then a foot below that we hit the tops of these stumps, and the roots of those stumps laid in that blue mud, and

when we got through that blue mud then we were free of the stumps, and that put the stumps eight or ten feet below the surface, the roots of the stumps.

Q. Eight or ten feet below—

A. Below the surface of the ground.

Q. Do I understand that from your observation that Lake Pontchartrain is growing larger?

A. It is widening its area undoubtedly, and we have that evidenced here, in a distance of 13 miles, we have proof of that theory that there is an increase of the area of the lake, for 13 miles of about 300 feet in width along the New Orleans and Northeastern road.

Q. Do you know how wide that lake is at its widest part?

A. It is 34 miles, I believe it is said to be in its widest part.

Q. The action of the wind on its surface is violent in the storm season?

A. Yes sir, there are very big waves out on that lake small as it is, in a blow.

Q. You answered awhile ago it would have the same effect in the Mississippi sound.

A. I did not intend to say that. I thought I was answering where the same marsh land was.

Q. You stated that the wind blowing in from the eastward and then it whipped around and started from the northward and drove the waters upon the south shore of the Lake Pontchartrain; of course there would be no southern shore of the sound—

A. No sir, I was referring to the southern shore of Lake Pontchartrain.

Q. There would be a difference between that and Mississippi sound?

A. Yes sir. Mississippi sound I believe would be subject to easterly gales principally.

Q. Can you say whether or not the easterly winds are the most disastrous along the Mississippi sound, Mississippi shore?

A. I would say yes, because the winds from the westerly direction would be more or less off land winds, and the winds that sweep the ocean would be those easterly gales, almost from any easterly point.

Redirect examination.

By Mr. DYMOND:

Q. Will you please look at this map and notice Malheureux point and then notice Isle à Pitre, with the shore line between the two. Do I understand you to say that there was no shore line on the south shore of Mississippi sound between those points?

A. No sir; I did not speak at all in reference to Mississippi sound; was speaking entirely in reference to Lake Pontchartrain.

Q. Well, now, with a northwest wind on the waters of Mississippi sound which you see before you and which lie north of this shore

line between Malheureux point and Isle à Pitre, would there be a proportionate effect produced by—

A. There would. Northwest would lie about in that direction.

Q. Would that effect be proportioned in the erosion of that shore line on the south shore of Mississippi sound, the same conditions existing?

A. With the same soil conditions and the same wind conditions, I would look for it to be proportionate, in fact, it would be proportionate.

Q. If these southeast winds of which you have spoken as filling up Lake Pontchartrain existed would or would not that effect be the same in filling up the western end of Mississippi sound and the eastern end of Lake Borgne?

A. The eastern gales crowd the water through the passes from the Gulf into all these sounds, through all the passes into the sounds and the effect of the northwest winds is to pile it up on the southern shore, the waves break against that shore with great violence and cut away the soil.

Q. On account of the more open entrance here would there not be more water accumulated in the west end of Mississippi sound and Lake Borgne than would be accumulated in Lake Pontchartrain having to pass through the Rigolets?

A. Into Mississippi sound and Lake Borgne, the incoming waters from the east gales have very much greater area to pass through than through the Rigolets in Lake Pontchartrain and the result would be more water in Lake Borgne and the sound than in Lake Pontchartrain from the same winds.

Q. Now, suppose that under those circumstances the wind shifted to the northwest, what would be the effect then on this Saint Bernard peninsula?

A. The effect of the wind from the northwest when the lake is filled would be to crowd the water against this south shore between Malheureux point and Isle à Pitre, and the same wind would give a current along that shore parallel with the shore and the waves would break on the shore and the current parallel with the shore carry the material away; it would cut out the material and carry it away.

At this stage of the proceedings, the hearing was adjourned by the commissioner until 2.15 for recess.

Resumption of Proceedings.

2.15 P. M.

Pursuant to adjournment for recess the hearing was resumed at the same place and date at the hour of 2.15 p. m. All parties being present.

WM. K. M. DUKATE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. At Biloxi, Mississippi.

Q. What is your occupation?

A. Manufacturer of canned products.

Q. Do you can oysters?

A. Yes sir.

Q. How long have you been in that business?

A. About 24 years.

Q. Have you an establishment for the canning of oysters, in Biloxi?

A. Yes sir.

Q. Are you interested and a stockholder in the Louisiana Canning Company Limited, at the Rigolets?

A. Yes sir.

Q. Are you interested in the Neptune Canning Company at Neptune, Louisiana?

A. Yes sir.

Q. You are, in fact, one of the most extensive of southern handlers and packers of oysters?

440 A. I think so.

Q. Are you familiar with the area which is in dispute in this suit between the States of Louisiana and Mississippi?

A. I might say that I am in a general way.

Q. What gives that area its value?

A. By reason of its productiveness from an oyster standpoint.

Q. Are you from your experience in the handling of oysters and from your knowledge of the cost of fishing oysters and from the profits to be made from the canning of oysters, able to put any approximate estimate on the value of this area that is in dispute, an estimate based on the oyster value?

A. Well, now, if you will permit me to answer that in my own way, perhaps it would serve you better than to answer the question direct. I should think if it was possible for either or both of the States to dispose of this property by warranty deed, under proper police protection, that its present value would be at least \$2,000,000.

Q. You were quoted some time ago by the newspapers as stating that you would be willing to pay \$200,000 a year for the exclusive privilege of the oyster product of that area, you to fish the oyster product at your own expense. Was that newspaper quotation correct?

A. In the main it was. That, of course would embrace absolute and full control of the oyster beds within the given area under proper police protection afforded by the State having it in charge.

Q. How much would you be willing to pay annually to the State for the exclusive product of that disputed area?

A. I think, upon a conservative basis, I think we would be willing to pay \$200,000 per annum that is, with the understanding that we would have full and absolute control of the oysters within the given area to the exclusion of all others.

Q. Now, Mr. Dukate, do you own any land in the neighborhood of this disputed area?

Q. We own some land at or near Pirate point. I could locate the same perhaps by the map, I am not particularly familiar to show just where Pirate point is at.

(Witness shown map.)

A. This is the point at which we own some land, in here. I don't know whether it embraces this extreme point, but it is in this locality.

Q. Is that east of Nine Mile bayou?

A. Southeast.

Q. How much south is it?

A. I should judge, from the scale, that it would be—what is the scale of the map—perhaps four miles.

Q. We will just take and get the scale on this map. Look at this scale. Will you please say how far south the extreme point of Pirate point is below the extreme southern end of Nine Mile bayou?

A. You mean to take it as an air line or by navigable waters?

Q. I mean in an east and west line?

A. According to the scale it would be about two miles and a half.

Q. How much is this according to the scale?

A. It would be about two miles and a half.

Q. How much is this according to the scale?

A. It would be one mile.

Q. Well, now, what is this on the scale, that first mark? Do you now recognize this pencil to be on an east and west line just immediately south of Pirate point?

A. Yes sir.

Q. What then is the distance from the western end of this pencil north to the southern end of Nine Mile bayou, according to the scale?

A. About $\frac{3}{4}$ of a mile.

Q. Will you now then state the distance from the shore line extending between Malheureux point and Isle à Pitre to the southern end of Pirate point?

A. Where is Malheureux point?

Q. I mean just this shore line, here is Malheureux point and here is Isle à Pitre. Now, taking this shore line, what is the distance from that shore line to the southern end of Isle à Pitre?

441 A. According to the scale it appears to be about four miles.

Q. Is this land within the area claimed by Mississippi under her 18 mile claim?

A. That I could not answer unless I determined the same by measurements from the map.

Q. Will you please look at this map No. 7 and state whether Pirate point is north of the red ink line marked on this map, 18 statute miles.

A. It is north.

Q. From whom did you buy this land?

A. From the State of Louisiana.

Q. Through any agency of the State?

A. I can't recall just who the land was brought from; the land commissioner or levee board of Saint Bernard parish, I don't recall how we came by it.

Q. Will you please look at this document, which is now submitted to you and which for the purposes of identification is to be marked Document No. 7?

A. I recognize this as a copy of the original deed that we now hold for the land in question.

Q. You say we, whom do you mean?

A. The firm of Lopez and Dukate.

Q. Of which you are a member?

A. Yes sir.

Q. Did you buy this land as stated, at the date stated, from the board of commissioners for the Lake Borgne Basin Levee district?

A. To the best of my recollection, we did.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the certified copy of the act of sale by the board of commissioners for the Lake Borgne Basin Levee district to Lazaro Lopez and W. M. K. Dukate, under date of March 14th, 1902, before James D. St. Alexandre a notary public for the parish of Saint Bernard, State of Louisiana, registered in the conveyance office of the parish of Saint Bernard, State of Louisiana, on the 15th day of March, 1902, in Conveyance Book No. 20, folio 77, together with the certificate of registration thereon, marked for identification, Document No. 7.

Q. Have you been paying taxes on this land since you bought it?

A. Yes sir.

Q. To whom and to what State have you been paying these taxes?

A. To the sheriff of Saint Bernard parish, State of Louisiana.

Q. Have you ever paid any taxes on these lands to the State of Mississippi?

A. No sir.

Q. Have you ever been asked by the State of Mississippi to pay any taxes on these lands?

A. No sir.

Q. Have you ever been asked by any county of the State of Mississippi to pay any taxes on these lands?

A. No sir.

Q. Now, there has been some evidence given by some witnesses concerning a boat by the name of the Josephine Lopez gathering oysters; do you know such a boat?

A. We have a schooner named the Josephine Lopez.

Q. Do you know of any other schooner or boat by that name?

A. No sir.

Q. Do you know where she carried oysters, to what point?

A. She is carrying oysters to Biloxi and perhaps to the Rigolets. I am not positive as to the latter.

Q. Can you state whether she did carry oysters to Biloxi at any time?

A. She is carrying oysters to Biloxi at this present time.

442 Q. No; but could you state whether or not she ever carried oysters to Biloxi from the Louisiana marshes, what is known as Saint Bernard parish, in 1898?

A. To the best of my knowledge it did not, unless in the capacity of a freighter, and I am not certain whether the boat was freighting oysters at that time, but to engage in fishing and catching oysters I am quite positive that the vessel or crew has never been engaged.

Q. There is no evidence about her tonging oysters, but there is some evidence as to her carrying oysters as a freighter to Biloxi?

A. It is possible that the vessel may have carried oysters as a freighter; but I do not think from the Louisiana marsh.

Q. If, Mr. Dukate, one of the witnesses who was on the original expedition sent out by the police jury of Saint Bernard parish, has testified that on this expedition which occurred in the month of January 1898, he had seen the Josephine Lopez freighting oysters from the mouth of Three Mile bayou and lying in Three Mile bayou at the time, taking on a cargo to be transmitted to Mississippi, would you be prepared to dispute the correctness of that witness's statement?

A. I should say that he is evidently mistaken as to the identity of the boat, and as to the place at which the oysters were intended for.

Q. Do you understand the question. You think you understood the question?

A. I believe that I did. I may not have understood it. I should say that if he identified the schooner Josephine Lopez anchored in Nine Mile bayou—

Q. Three Mile bayou?

A. Three Mile bayou, taking on a cargo of oysters intended for Biloxi Mississippi to be transported to Biloxi Mississippi that he was—

Q. In 1898?

A. In 1898.

Q. Yes?

A. Oh, I beg your pardon, I—

Q. In January, 1898?

A. That is six years ago?

Q. Yes?

A. I was thinking it was the past season you were talking about. I misunderstood you. How did you close your—

Q. I asked you, if this witness had testified that in the month of January 1898 which is over six years ago, if he said that he had seen the Josephine Lopez in the locality I have just mentioned, would you be prepared to dispute the correctness of his statement?

A. No sir; I believe he was correct.

Q. This Mr. Lazaro Lopez who purchased this property concerning which you have testified, jointly with you, is that the Lazaro Lopez who was your partner for many years?

A. Yes sir.

Q. Is that the gentleman who died last September?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. You have been examined as to your estimate of the value of his disputed territory and also as to your estimate of its annual rental value under proper police regulation with exclusive privileges, and also as to the purchase of Lazaro Lopez and W. M. K. Duke of a parcel of land within 18 miles of the Mississippi shore, and the deed to you has been filed as testimony in this case on behalf of the State of Louisiana, and marked Document No. 7. Without asking any questions now as to the full value or rental value of the territory in dispute, I wish you would please state if you knew any other way by which you could become the owner of the land which you purchased at Pirate point and that mentioned in Document No. 7?

143 A. We have never made any efforts to determine whether there was any other way to purchase it or not, other than to apply to the Louisiana authorities for it.

Q. This deed seems to have been executed by Mr. John Dymond as president of the board of commissioners for the Lake Borgne Basin Levee district. Is it not true that you looked to that corporation to protect you in the possession and ownership of the land mentioned in that deed?

A. We would expect as much.

Q. In making that purchase was it your intention in any way to

settle or influence in any manner the true boundary line between the State of Louisiana and the State of Mississippi?

A. It was not.

Q. And that this property was within the 18 mile limit of the Mississippi shore the deed or act of purchase was not in any way to acknowledge on the part of Lopez and Dukate, or on the part of yourself, the right or title of Louisiana to that territory?

A. The matter and question of boundary was never considered, that is, between the two States, in making the purchase of the land.

Q. I show you a map which is marked Exhibit Map to Cross-Bill in Case State of Louisiana vs. State of Mississippi, Supreme Court of the United States, 1903, which I will ask you to examine and which I will have the commissioner mark Exhibit A and file as part of your answer to this interrogatory about which I will examine you further. The black line out of the mouth of Pearl river, to the eastward, as you will see, indicates what we understand to be Louisiana's claim of the deep water channel through the Mississippi sound into the Gulf. The red line marked on this map, as you will see, indicates Mississippi's claim to her six league limit, to the south of her shore. Say whether you so understand that map?

A. I understand the map from the lines as indicated by your explanation as being the territory that is claimed by Mississippi, this is supposed to be the line due south from Pearl river running here to a point, supposed to be the main land.

Q. I want to ask you first, this question, whether you and other persons interested in the oyster and fishing industry from Biloxi and other points on the Mississippi shore, have regarded the sovereignty and jurisdiction of the State of Mississippi as extending 18 miles from her shore as indicated by the red lines on this map, and if so how long you have so regarded the rights of the people of Mississippi and the jurisdiction and sovereignty of Mississippi to that extent?

A. We have always regarded the boundary of the State of Mississippi as reaching six leagues or 18 miles from the shore, including all islands as indicated by the boundaries as mentioned in the Code of Mississippi.

Q. And so regarding that limit, have you, and other Mississippians exercised the rights granted under the laws of that State within the territory indicated on the map as belonging to that State?

A. I believe that we have. Whenever the question has been brought up. I will state, however, that there has been never any molestation on the part of either State until I think the past two or three years.

Q. You have been interested in the oyster business at Biloxi about 24 years?

A. Yes sir.

Q. During those 24 years, have you, and I mean by you the firm of Lopez and Dukate, and I may say all other Mississippi factorios and Mississippi people, so far as you may know, been taking oysters

and fish, and exercising the same rights down in what is indicated, and what you know to be the Louisiana marshes, as you have north of what is marked on these maps especially Exhibit A of Mississippi, to your deposition herein, as the deep water channel?

A. The same conditions have existed as to the taking and catching of oysters and fish north of this line indicated as have existed south of the line.

Q. What line do you mean?

444 A. Of the deep water channel, as they have south of the line of the deep water channel into what has been termed heretofore as the Louisiana marsh.

Q. Has there ever been any distinction, so far as your information goes, whether that information be from actual knowledge, actual interest, or from tradition, or any sort of information, has there ever been any distinction made between the rights of the people of the two States so far as the deep water channel is concerned in taking fish and oysters, before the bringing of this suit?

A. Not to my knowledge.

Q. You have never heard any controversy before this?

A. Never have.

Q. And the privileges which Mississippians have heretofore exercised north of this deep water channel, have extended as far down as this red line, to the south, about the Lake of the Mound and Southwest bayou?

A. Yes sir. I am answering that by saying it has extended this way an indefinite distance covering all this territory and much territory below it, until this controversy.

Redirect examination.

By Mr. ZACHARIE:

Q. Is that from your personal knowledge?

A. Not from my personal observation of it, but to the best of my knowledge and belief and information received. Of course, I am not present when these oysters are got; but I am satisfied they have been gotten within a given area or certain territory because I can recognize the oysters.

Recross-examination.

By Mr. McCLURG:

Q. Is it not true that the firm of Lopez and Dukate, the Barrataria Company at Biloxi and others interested in the fish and oyster business along the Mississippi shore, have been gathering fish and oysters undisturbed, before the present contention arose, in what we are told now are the Louisiana marshes, and to the south of this deep water channel line just as the same as north of the deep water channel?

A. The same conditions applies as to taking and catching oysters,

as I stated a few minutes ago, north of the line as existed south of the line of the deep water channel.

Q. I wish you would state, of your own knowledge, how long the boats and crafts of Lopez and Dukate have been taking oysters along the north side of Isle à Pitre and along Turkey bayou, Three Mile bayou, and Nine Mile bayou, and to the south, and how far south they have exercised that privilege?

A. We have been receiving oysters from the territory mentioned, for the past 20 or 25 years. But for me to state from my personal knowledge as to just where those oysters came from I am not able to say other than the fishermen reported "I got my oysters in Nine Mile bayou, or Treasure bay, or Indian Mound bay, or Drum bay," they always have some point to designate from which the oysters came.

Q. And those conditions have existed for the last 25 years?

A. Yes sir.

Q. Is it not your information that those conditions have existed as to the Barrataria Company?

A. I believe they have.

Q. And with reference to other fishermen from the Mississippi side?

A. Yes sir, covering a period of from 15 to 25 years, some of them were engaged earlier and some later.

Q. Have you any knowledge of any threatened conflict with arms between the officers of Saint Bernard parish and the officers of Hancock county Mississippi or any other officers of the State of Mississippi because of this oyster business?

445 A. Nothing only what I have been able to gather from newspaper reports, nothing authentic.

Q. About how many boats or employees has your firm had in that territory within the last five years?

A. I should say, ranging all the way from 75 to 200 people.

Q. And that includes all the territory within 18 miles of the Mississippi shore?

A. Yes sir; well, I was speaking of the past two years, since this controversy arose, I should say there have been from 200 to 300 engaged in fishing oysters, I was only speaking of this particular territory for the past two years.

Q. You are speaking of the arrangement made between the two oyster commissions?

A. Yes sir.

Q. Prior to that time, the conditions were the same around Half Moon island or Three Mile bayou or anywhere else in the sound?

A. The conditions were the same as regards fishing, oysters.

Q. And those same conditions extended down to Lake of the Mound?

A. Yes sir; they extended down, prior to this controversy, an indefinite distance all the way to this line and perhaps much further.

By Judge GUION :

Q. Further south you mean ?

A. Further south and west.

By Mr. McCLURG :

Q. I will ask you to please keep your eye on that map Exhibit A, to your deposition herein, while I read to you from the concluding clause of Mississippi's cross-bill, and will ask you to say whether or not you and other Mississippians regard the line named, as a correct boundary line between the two States, "beginning at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the gulf of Mexico" ?

A. That is not shown on this map.

Q. We will have to take the map offered by the complainant in this case which Mr. Dymond will kindly let us have. It runs westwardly with the lines of the shore six leagues always therefrom until said line reaches and touches the real main land of Louisiana about two miles due west—

A. Touches the main land of Louisiana ?

Q. Take this map now, Exhibit A of Mississippi. — of Indian Mound bay and Lake of the Mound and thence in a northward direction along and on high tide mark on said Louisiana main land to Mississippi sound, at or near Nine Mile bayou, thence further along said main land at high tide mark westerly to that point due south of the middle of the most southern or eastern junction of Pearl river with Lake Borgne. Has not that been considered the dividing — between the two States ?

A. According to the descriptive laws governing the State of Mississippi that territory has always been considered as belonging to the State of Mississippi as I stated awhile ago, as indicated by the Code of the State of Mississippi, at the time that Mississippi was admitted into the Union, and formed a State. Does that answer your question ?

A. Yes. Then as I understand you, the people interested in that fish and oyster business have construed that authority under the code and the act of Congress to allow you privileges down to the southern part of Treasure bay ?

A. 18 miles from the shore including all islands and we have always called this territory here as a group of islands.

Q. You never had any trouble about it until about two years ago ?

A. Not that I know of.

Q. What has been the annual gross output of your factory within the last three years ?

A. You mean in dollars and cents ?

Q. Yes ?

446 A. The finished product ?

Q. Yes ?

A. I judge, for the past three years—you are speaking now of the Mississippi canneries alone?

Q. Yes, I mean annually?

A. I should judge for the past three years that Mississippi has averaged about \$350,000 *dollars* per annum.

Q. About how many barrels of oysters, annually, during the last three years has your factory at Biloxi handled?

A. For the past three years, at Biloxi, we have packed in the neighborhood of 700,000 barrels of oysters.

Q. Are you speaking for the Barrataria Company?

A. I could not only in a general way.

Q. What would you say in a general way about that factory?

A. I should say they have packed within the past three years from 275,000 to 300,000 barrels of oysters.

Q. The two make something in the neighborhood of one million barrels?

A. Yes sir.

Q. And since this agreement as to neutral territory the catch in Mississippi waters has been restricted has it not?

A. Materially so.

Q. And these oysters that you speak of, the million barrels, have come out of Mississippi waters before the agreement and in respect of the agreement afterwards?

A. Yes sir. We packed prior to three years ago much more than in the past three years.

Q. This deed to you that has been exhibited here, does not undertake to convey any land covered by water?

A. No sir.

Mr. McCLURG: The map Exhibit A. is here tendered with the deposition of Mr. Dukate on cross examination, as evidence.

Mr. DYMOND: Counsel for the State of Louisiana object to the offer and except to its introduction, on the ground first, that there has been no evidence introduced whatever showing the correctness of this map, by whom made, or by what authority; and for the second reason that it is inadmissible in evidence at this time during the examination of witnesses and the introduction of evidence by the complainant; and third, that there is nothing in the agreement already entered into between counsel for Mississippi and counsel for Louisiana, justifying the admission of the same in evidence or of the tendering of the same to the commissioner for the purpose of being used as such.

By Mr. DYMOND:

Q. As I understood you a moment ago, you testified that you knew the act of Mississippi to provide that Mississippi was given all islands within six leagues or 18 miles of its shore?

A. Yes sir.

Q. Are you aware of the description of the State of Louisiana, at the time that it was created by the United States Congress?

A. I have read the description of the State.

Q. Are you aware that it was to receive islands within nine miles or three leagues of its coast?

A. Yes sir.

Q. At Malheureux point, is there a distance of nine miles from Malheureux point to the main land at the mouth of Pearl river?

A. I could not say. I should judge the distance to be between seven and nine miles, somewhere along there.

Q. Would you be prepared to say that any of your Mississippi fishermen or any of your firm or any member of any
447 oyster canning concern in Mississippi, would be able to go into the Louisiana marsh and state that that was the point 18 miles distant from the Mississippi mainland?

A. The distance could not be located only by buoys or natural measurements.

Q. Has any such effort ever been made by the State of Mississippi?

A. Not to my knowledge.

Q. This fishing of oysters you have spoken of as existing in the Louisiana marshes for the last 20 or 25 years, was that fishing of oysters restricted to the area within 18 miles from the Mississippi mainland?

A. I don't think that it was.

Q. Was, or was not as a matter of fact, that fishing of oysters extended indiscriminately down, in fact, into the parish of Plaquemines south of the Saint Bernard parish?

A. I so stated, that the distance is beyond the supposed boundaries of Mississippi indefinitely, it extended on into the parish of Plaquemines.

Q. Were not oysters gathered in American bay and taken to Mississippi?

A. To the best of my knowledge they were.

Q. Were not oysters gathered in California bay and taken to Mississippi?

A. To the best of my knowledge they were.

Q. Were they not gathered and taken to Mississippi with as great a frequency as oysters were from that territory which would be within 18 miles of the Mississippi shore?

A. I hardly think so, with the exception of one or two years immediately following the destruction of the oysters by the Nita cre-asse. The oysters in California and American bays were not destroyed, at that time, while those in all this disputed territory and far beyond the disputed territory in Louisiana were destroyed even as far down as Point Chico.

Q. In what parish are California and American bays?

A. I think they are in the parish of Plaquemines.

Q. Was any question raised at that time that you or other Mississippians were getting outside of their 18 mile limit?

A. Not to my knowledge. There was some talk, that is, I heard, at least there was some talk of preventing the Mississippi fishermen

from coming so far down to gather oysters although I don't think anything ever came of it.

Q. Was, or was not the fishing of oysters just as indiscriminate below the 18 mile limit as it was above the 18 mile limit?

A. I believe that it was just as indiscriminate; in other words, as I stated, a while ago, the same conditions prevailed above in the Mississippi waters north of the deep water channel as they did south for an indefinite distance to the mouth of the Mississippi river, prior to this controversy.

Q. Do you believe, as gathered from your answers made to the counsel for Mississippi, and would you be prepared to say that any of these fishermen on any of their expeditions within the past 25 years except within the last couple of years since this dispute has arisen, that any of these fishermen ever considered whether they were or not in one or the other State?

A. I don't believe they ever thought of the matter from a boundary standpoint.

Q. What were these marshes commonly called and what have they been called?

A. They have been known and designated as the Louisiana marsh.

Q. Has that been the case ever since you have known this section?

A. It has, generally speaking.

By Judge GUION:

Q. Did you instruct your fishermen to confine themselves to the 18 mile limit?

A. I never did.

Q. Then you don't know but that they fished oysters further south than the 18 mile limit?

A. I am satisfied that they did fish both north and south.

448 Q. You say they fished in Drum bay?

A. Yes sir. I have known them to fish there.

Q. And you say they fished in California bay and American bay, Lake of the Mound?

A. Lake of the Mound I am not sufficiently familiar with that place.

Q. Do you know anything about Live Oak bay?

A. It has been shown to me and pointed out to me in sailing by.

Q. Do you know whether they fished there?

A. No sir.

By Mr. DYMOND:

Q. Have they been fishing in Caraho bay?

A. Yes sir.

Q. All through that section?

A. Yes sir.

Q. When was it that you first had any idea about this line as indicated by the attorney for Mississippi, extending through this

marsh until it came to what Mississippi claimed to be Louisiana's mainland?

A. I will answer that by saying for several years past in fact I might say since the year 1890 or 1893, I am not positive which, at the time at which dredging was inaugurated in the State of Mississippi—

Q. Dredging of oysters you mean?

A. Yes. That controversy began to brew and there were reported rumors of discontent on the part of Louisiana authorities of Saint Bernard parish, and in that manner our attention was first called particularly to the question of boundary between the two States. Prior to that time I do not think we ever had occasion to consider or even think about it; but we have always felt as though there would eventually be an issue brought about between the two States in regard to these boundaries, and for that reason for several years past, why, the question of boundaries has been called to mind on more than one occasion, and within the past two years of course it has been brought to an issue. That is the best explanation I can give.

Q. When was the first time that you became aware of this particular line set forth by Mississippi?

A. I don't know that I would term it particular. I would only designate it as indicated by the Code and the act of Congress creating and forming the State of Mississippi, as embracing the territory six leagues or 18 miles from the shore including all islands, and naturally, from personal observation and the hearsay of others, we have always considered this part of the territory as a part of the islands embraced within this 18 miles, the same as we would consider Cat island, the same as we would consider Round island or any other island taking the island entirely surrounded by water and considering it as an island, in fact, just the same as Round or Cat island.

Q. How long have you put that interpretation on this territory down there?

A. Since my attention was called to this trouble which we felt certain would be brought about sooner or later, I might say as early as 1893, about the time that dredging was inaugurated in the State of Mississippi; it was then claimed by Louisiana or the authorities of Saint Bernard parish that these dredges had been seen within the marsh, that is, Grand pass, and other places, and dredging oysters.

Q. And the Louisiana laws prevented dredging?

A. Prevented the dredging of oysters, and as a matter of fact there were times when they went beyond Grand pass and dredged because there was not water in there sufficient to dredge in there.

Q. Then it was that the Mississippians originated this idea about this particular line, or, at least, they then for the first time set about to claim this was the line?

A. We never set up any claim at all. We were merely on the

defensive, and examined into the question of the boundary
449 from the fact that Louisiana would in time bring the matter
up or draw it to the attention of the proper authorities and
we wanted to be on the safe side.

By Mr. TAYLOR :

Q. Do you know of any instance where any of the authorities of Mississippi and I am not now speaking of mere citizens, that made any claim to this line that you have been testifying about as being the line of the division or boundary between Louisiana and Mississippi?

A. No action has ever been taken by the authorities of the State of Mississippi until this suit.

Q. As a defence to the suit?

A. As a defence to the suit.

By Mr. DYMOND :

Q. Have you ever sailed along the north shore of the Louisiana marsh from Petite pass to Isle à Pitre?

A. Quite frequently, yes sir.

Q. What is the character of that coast line; is it a well defined coast line or not?

A. It is broken by bayous and cut-offs and small lagoons, it is not continuous.

Q. Well, is it, as a coast line, distinct or not?

A. It is distinct as a coast line.

Q. What are the bayous that you speak of?

A. There are several.

Q. Will you please mention them?

A. There is Nine Mile.

Q. Nine Mile what?

A. Nine Mile bay I believe it is termed.

Q. Is that the pass or bay?

A. I am only speaking generally, because I am not navigator nor sufficiently posted. I only know them from the names that have been given to me by the captains in charge of vessels at different times and from the maps. I know of such a place as Nine Mile bay; I know of another as Johnson bayou and I know of another as Three Mile bayou, I know of another as Turkey bayou and I know of another as Grand pass, I know of another as Creole gap.

Q. What does Grand pass separate, what two bodies of land?

A. It separates a body of land lying between, if I am not mistaken, lying between Creole gap and Grand pass to the eastward; I don't think there is any bayou—

Q. What does Creole gap cross?

A. It separates the land lying between Isle à Pitre and Creole gap to the best of my recollection.

Q. Does Creole gap divide Isle à Pitre into two parts?

A. I am not prepared to say whether it does or not.

Q. Are you prepared to deny that the whole of that northeastern extremity of that peninsula is known as Isle à Pitre?

A. Am I prepared to deny it?

Q. Yes?

A. No sir.

Q. What other part of this area is known as an island other than Isle à Pitre, from your personal knowledge?

A. I know Sundow island.

Q. Where is that?

A. I believe that that is about southeast of Creole gap, if I am not mistaken.

Q. What other island, do you know another?

A. I know of no others that I can call by name.

Q. Are you prepared to state that this peninsula extending from Malheureux point to Isle à Pitre was or was not the original main land in 1812, or coast line?

A. I am not prepared to say.

Q. Do you know anything as to what effects there have been produced on this locality by storms for the last 100 years, or any
450 subsidence that may have occurred in the last 100 years?

A. I do not. My recollection only goes back to a period, say, covering 20 years.

Q. Is your knowledge of the locality sufficiently intimate to enable you to state what, if any, effects have been produced in that period of time from either of these causes?

A. I do not think it is.

By Judge GUION:

Q. This land in this act of sale, or rather copy of act of sale, passed on the 14th of March, 1902, from Mr. John Dymond president of the board of commissioner for the Lake Borgne Basin Levee district purchased by William M. K. Dukate and Lazaro Lopez is described as being sections 26 and 21 and islands K, L, M and N, in township 12 south range 18 east, in the eastern district of Louisiana, 510 acres more or less. At that time, when you made this purchase were you aware where these lands were located?

A. I was aware of about the location. I had visited Pirate point prior to the purchase of this land and Mr. Lopez had the matter, really had the matter of purchase in hand and he informed me and pointed out on the map just about the location we had purchased and it has always been known and considered Pirate point.

Q. Did you consider that property to be in the State of Louisiana at that time?

A. We certainly did, or we would not have purchased it from the State of Louisiana.

Q. It was in the disputed area, was it not?

A. That never was thought of at the time. I see now that it is.

Q. Then at the time you purchased this territory from the Lake

Borgne Basin Levee district, you purchased what you considered at that time belonged to Louisiana?

A. Yes sir.

Q. Had you made any effort to acquire it from Mississippi?

A. No sir.

Q. For what reason?

A. We didn't suppose that it belonged to the State of Mississippi.

Q. Coming back simply to another point, if this property should be held by the Supreme Court of the United States to fall within the 18 mile limit and should be held to belong to Mississippi, you would expect to be refunded would you by the State of Louisiana the money you had paid for the land?

A. Oh, I don't know that we would fall out over that; the matter amounts to very little.

Q. You would consider you had a claim against the State of Louisiana?

A. We perhaps would have a claim, yes sir, but as to whether we would ever press it or not, that is something to be determined later.

By Mr. ZACHARIE:

Q. This land that you purchased from the State authorities of Louisiana, this levee board, is that within the boundaries of what you say you have considered as Mississippi territory since 1890?

A. I have noted from the maps and lines as indicated, that it is, I did not know at the time that it was purchased.

Q. Were you not pointed on the map where it was, by Mr. Lopez?

A. I stated awhile ago that the question of boundaries was never thought of nor considered. We just took it for granted that it belonged to the State of Louisiana and made the purchase accordingly.

Q. Then you did not believe, at that time, that this territory which you bought, this land that you bought, was in the State of Mississippi, did you?

A. I can't say that I gave it any thought at all, other than being in the State of Louisiana; I never anticipated that this controversy would ever come about.

By Mr. McCLURG:

451 Q. I noticed from your deed that you bought two sections of land, sections 26 and section 21, and also four islands, for which the State of Louisiana gave you a quitclaim; did it expressly provide that she did not warrant the title to the land, and for all of which you paid \$63.75. That is correct.

A. I believe in the main it is.

Q. Do you remember the steamer Sentinel?

A. I do.

Q. About what is her draft?

A. About six feet.

Mr. DYMOND: Counsel for the State of Louisiana object to any further examination, of the witness.

At this stage of the proceedings, the hearing was adjourned until April 9th, 1904, to be resumed at the same place and at the hour of 10.30 a. m.

Resumption of Proceedings.

APRIL 9TH, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed at the same place and at the date and hour above named.

Present: Frank H. Mortimer, Esq., commissioner.

Present: Hon. Walter Guion, att'y general for Louisiana.

Mess. John Dymond, Jr., and F. C. Zacharie and Albert Estopinal, Jr., associate counsel for Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Hon. Hannis Taylor, associate counsel for the State of Mississippi.

NOTE.—The following two witnesses not being able to speak or understand the English language, Mr. George H. Dunbar, was by consent of counsel for the State of Mississippi and the State of Louisiana, sworn in by the commissioner, as interpreter.

ADAM DUET, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. Bayou Lafourche.

Q. Whereabouts on Bayou Lafourche?

A. Nine miles below Lockport.

Q. Where is Lockport?

A. In Bayou Lafourche.

452 Q. Is Lockport the last settlement on Bayou Lafourche towards the Gulf?

A. There is no settlement lower than Lockport.

Q. Is that towards the Gulf?

A. Yes sir, going towards the Gulf.

Q. How old are you?

A. Fifty nine years.

Q. How long have you been living there at Lockport, or nine miles below Lockport?

A. Since the storm of 1893.

Q. Where did you live before that?

A. At Cheniere Caminada.

Q. Where is that ?

A. In Jefferson parish.

Q. Is not that near Grand island ?

A. It is right opposite Grand island.

Q. How long did you live at Cheniere Caminada before you left to go to Lockport ?

A. All my life ; I was born there in Cheniere Caminada.

Q. While you were living at Cheniere Caminada and since you have lived on Bayou Lafourche, have you had occasion to go around by boat through that section of the country ?

A. I never went around there, I never left the island since I left Cheniere Caminada, since I live in Lockport.

Q. What was your business when you were on Cheniere Caminada ?

A. Oyster fishing.

Q. How many years were you oyster fishing on Cheniere Caminada ?

A. About 40 years.

Q. Did you go about through the waters of that section and Jacko Campo, during those 40 years of fishing oysters ?

A. I never have known anything about Jacko Campo although I have been all around the waters, I never have known anything about Jacko Campo.

Q. Where did you fish oysters ?

A. On the westward of Bayou Lafourche, Lake Salvador.

Q. Do you know a canal that runs from Cheniere Caminada up to Bayou Lafourche at Lockport ?

A. Yes sir, not at Lockport.

Q. Where is it ?

A. That is what is called Saundres canal and it is called the Terrebonne Company.

Q. Does that canal extend westward beyond Bayou Lafourche ?

A. It traverses Bayou Lafourche and goes across to the Timbalier and the eastern end goes to Cheniere Caminada.

Q. What is the name of the body of water at the western end of the canal on the western side of Bayou Lafourche ?

A. It is called Bayou L'eau Bleu.

Q. Have you ever noticed any change in that section of the country produced by storms ?

A. Yes sir. I noticed a great deal of change.

Q. What change, if any, have you noticed ?

A. When I was young I used to fish oysters all through among the islands in Lake Timbalier. Now, there are no islands left, they have been eaten away by the storm.

Q. Has there been any change made on the main land or shore line ?

A. Yes sir, that is going back always. At the end of the fork of the Bayou Lafourche there came a steamship during the night and went aground. I put a stage from the main land and went aboard

steamship; and today that same wreck is three miles out, and an iron hull and it is now three miles from shore in the sand.

Was the shore moved or has the steamer moved?

It is the coast that is being eaten away.

Have you noticed any other changes in the shore or in any ds in that locality?

There is an island in Timbalier bay, it was called Isle Longue, this island was four miles in length and about a mile in width, today it does not exist at all. That is from 1855 I observed the island was there.

Q. Do you know what the character of the soil is down there?

It is prairie land.

Will you please look at this sample No. 1 and state whether and down there concerning which you are now speaking was ing like that? I mean the main land?

It is like this, a heavy sort of clay soil, mixed with sand.

Where this steamer was that you were speaking about, was and of a character similar to sample No. 1?

Yes sir; same soil where the steamship went aground.

Do you know where the Timbalier lighthouse is located?

Yes sir.

Is it located in the same place as it always was?

The lighthouse had been built in the lake about $\frac{1}{4}$ of a mile of the pass.

Is that where it is today?

It has fallen, it has given way.

What made it fall?

The storm of 1892 undermined it and it went over.

Is there a lighthouse there today?

On the coast there is a small lighthouse opposite.

When was the first time you saw the Timbalier lighthouse, the ae?

I saw the lighthouse for the first time in 1870.

How close was it to the shore, then?

The lighthouse was about $\frac{1}{4}$ of a mile from the coast.

Coast of what?

The coast of Timbalier.

Was it back of the coast line or out in the water?

It had been built inside of the coast in the water about $\frac{1}{4}$ of a rom the shore.

When you last saw it, was there any land between it and Tim-bay?

Yes sir, the Island Calumet.

Was that island there before?

Yes sir.

By Mr. ZACHARIE:

Do you remember when the lighthouse was first put up?

A. In 1857 the first lighthouse was put down there on Timbalier island.

Q. Do you remember anything that was done to that lighthouse to straighten it up after it had been put up?

A. No sir; they never done anything to it; it had been built on the edge of the coast.

Q. Do you remember a lighthouse having been built there since that went?

A. Two others.

Q. The second one, do you remember when that was built?

A. The second was built in 1869.

Q. Do you remember of anything that was done, and if so what, to straighten up that lighthouse when it was found it was leaning?

A. It was not straightened; but they built the other small lighthouse alongside of it.

Q. Do you not know that the second lighthouse at one time leaned and threatened to fall?

A. No sir; I have no knowledge of that.

Q. You have spoken of Timbalier lake. Do you mean the lake or sound or water between Timbalier and Caillou and also between Timbalier and the main land?

A. I call it by the name of Lake Timbalier; I don't know it by the name of Bay Timbalier.

Q. What you call the lake is the water between Timbalier and Caillou island and between Timbalier and the main land?

A. Yes sir; that is what I call Lake Timbalier.

By Mr. DYMOND:

Q. You said a moment ago that you did not know any
454 place by the name of Jacks Camp?

A. Yes sir, I know Jacks Camp.

Q. Isn't there where they fish oysters?

A. I didn't understand what was asked me just now by the name of Jacko Campo, but I know Jacks Camp very well, I have been fishing there all my life.

By Judge GUION:

Q. Did you ever know a place called Last island?

A. I never went that far; I don't know anything about Last island.

Q. Do you know anything about Caillou island?

A. Yes sir, I have been as far as that.

Q. Is it to your knowledge that Caillou island was ever inhabited?

A. Yes sir, I knew of a hotel there at one time.

Q. Did people go there in the summer time to that hotel?

A. Yes sir; people used to go there in the summer time to that hotel; they came from different parishes.

Q. Was not Caillou a resort in the summer time by people from the lower parishes of Louisiana?

A. Yes sir, they all came, they took it as a resort and came from different parishes there.

Q. When was that?

A. That was before the civil war.

Q. Up to what time did it continue?

A. Up to the storm of about 1867; after that everything fell and went to pieces during the storm, the hotel was washed away during the storm.

Q. Does anybody go there now?

A. I don't know.

Q. Do you know, as a fact, that the hotel was destroyed?

A. Yes sir.

Q. What month was that?

A. That was the 3rd of October 1867.

Q. How is the island now?

A. I don't know, I never returned there.

Q. When were you there last?

A. It has been about 15 years since I have been to that island.

Q. When you saw it last what condition was it as compared to what it was during the years previous?

A. It was very much different, it is nearly all eaten away.

Q. By what?

A. Bad water, bad weather.

Cross-examination.

By Mr. McCLURG:

Q. The Lafourche country is west of the Mississippi river?

A. Yes sir.

Q. How far northwest of the mouth of the Mississippi river is the mouth of Bayou Lafourche?

A. About 55 miles.

Q. How far are those lighthouses of which you have been speaking from New Orleans?

A. Not less than 80 miles in a straight line.

Q. Where is this island Caillou?

A. I think it is in Terrebonne parish.

Q. That is also to the west of the Mississippi river?

A. Yes sir.

Q. How far from the mouth of the Mississippi river is that island?

A. About 70 miles, in a straight line.

Q. Have you any personal knowledge or information as to the conformation of the islands east of Saint Bernard parish?

A. I have never been there.

Q. And you know nothing about that country there at all?

A. Nothing about the conformation of that land at all in the eastern part of Saint Bernard parish.

Q. Did you ever see Isle à Pitre?

A. No sir.

Q. Were you ever at Malheureux point?

A. No sir.

Q. Were you ever in Lake Borgne?

A. No sir, I don't know Lake Borgne.

Q. Do you know Treasure bay?

A. No sir.

Q. Do you know anything about that country over there at all?

A. I have never lived in that section at all, I have never been there in my life.

JOSEPH TOMESSI, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. Where do you live?

A. I live in Lafourche parish.

Q. In what part of the parish?

A. At the Cut-off.

Q. How far is that from the mouth of Bayou Lafourche?

A. It is about 45 miles from the mouth of the bayou.

Q. I mean the Gulf?

A. From the Gulf, it is 45 miles from the Gulf.

Q. Have you ever been engaged in oyster fishing business?

A. Yes sir.

Q. Have you ever done any of it yourself?

A. Yes sir. I tonged oysters myself, I am an oyster fisherman.

Q. How long have you been engaged in that kind of business?

A. Since 1853.

Q. Up to the present time?

A. Yes sir.

Q. How old are you?

A. I am 67 years old.

Q. Does your business as an oyster fisherman ever take you out of the mouth of the bayou into the Gulf?

A. Oh, yes.

Q. Did you go to the east or west of Bayou Lafourche?

A. Both sides east and west.

Q. To what place did you go in order to catch these oysters?

A. Southwest pass of the Mississippi river, as far west as the Atchafalaya.

Q. Did you ever go west of the Atchafalaya?

A. No sir, I have never been further west than the Atchafalaya, I have been there with the boat but not to fish oysters.

Q. Have you noticed any changes in the configuration of that country from Southwest pass to the Atchafalaya river during the time you have been engaged in the oyster business?

A. Since 1862 I was at Southwest pass, and I never returned to

Southwest since that time; since then I have been fishing in Barrataria bay; then I returned to Timbalier after fishing in Barrataria bay.

Q. Where did you fish from the time you first began, up to the time that you left that place between the mouth of Bayou Lafourche and Southwest pass, where was it you fished during that time?

A. In Barrataria bay and in Timbalier.

Q. Is Timbalier between Bayou Lafourche and Southwest pass?

A. Timbalier is on the west of Bayou Lafourche and Barrataria to the eastward of it.

Q. What place was it you fished between Southwest pass and Bayou Lafourche?

A. Barrataria bay.

Q. When did you commence fishing there?

A. In 1870 and 1872.

Q. Have you noticed any change in that part of the country during the time that you were fishing there?

A. Yes sir.

Q. What changes did you notice?

A. I saw islands being eaten away.

Q. You know this marsh along the coast of Louisiana between the mouth of Bayou Lafourche and Southwest pass?

A. Yes sir.

Q. How far inland does that marsh extend?

A. It varies; some parts a quarter of a mile, some parts two miles, where the marsh goes inland.

Q. In addition to the disappearance of islands have you noticed any changes in the marsh along that coast?

A. Certainly, I know of an island where they had a certain mark, island mark to go to a certain point, and today the island has disappeared.

Q. Along that coast have there been any bayous or inlets cut into the marsh?

A. There are some that have been formed and others have disappeared.

Q. Have there been in the interior of that marsh any lagoon or lakes or openings formed?

A. It had formed into islands.

Q. Were there any lakes, large or small, formed in this marsh during the time you speak of?

A. No sir; no lakes or lagoons that are formed.

Q. Was this marsh solid marsh when you first knew it?

A. No sir.

Q. What kind of marsh was it?

A. When the tide is low, the marsh is dry and when it rises there is a certain amount of water that covers it.

Q. Was that marsh broken by lagoons or bays or bayous when you first knew it?

A. Yes sir.

Q. Was it to the same extent as of late?

A. No, no.

Q. In what is there a difference?

A. There are islands that have been eaten away; other parts the main land has been eaten away, eaten through and bayous have been cut in through and formed islands; in other words where the islands were eaten away the water has gone into certain parts and cut in through there, and formed gaps and left islands there.

Q. What was the cause of that?

A. The sea, when the tide was high and the wind and current, the land would be eaten away.

Q. Was it the wind, and the tide brought in by the wind, that caused it?

A. Yes sir.

Q. When did you leave that section of the country fishing oysters between Southwest pass and Bayou Lafourche?

A. I can't say exactly the year.

Q. About what year?

A. About in 1882 or 1883.

Q. Where did you go?

A. I went to Timbalier.

Q. West of Bayou Lafourche?

A. Yes sir.

Q. How far west?

A. On pleasure, about 15 miles.

Q. How long did you fish oysters at that place?

A. I fished oysters there up to 1890.

Q. Have you been back to that country since you quit fishing oysters in 1890?

A. Oh, yes, I have been there.

Q. When was the last time you were there?

A. The month of December 1903.

Q. During the time that you first went there in 1882 up to December 1903, have there been any changes in the configuration of that country?

A. A good many.

Q. In what respect?

A. I found changes this way, that there were islands when I used to go there on which I could build a hut, and when I went
457 back the islands were not there and didn't exist.

Q. Have they disappeared?

A. They have not disappeared but they have been eaten away. They have gotten so small you could not put a hut on them.

Q. Can you name any of the islands, if they had any names?

A. Yes sir.

Q. Name them?

A. Isle à Pelican; there was a camp there and a cabin built on that island, the island was about $\frac{1}{2}$ of a mile long by about an acre wide.

Q. Is that the only island you refer to?

A. No; I know of others.

Q. Give the names of them?

A. There was another island which was called Isle Longue.

Q. How large was that?

A. I knew that island in 1853; I knew about it afterwards also.

Q. When you first knew it, how large was it?

A. That island had about four miles in length when I first knew it, and about three acres wide.

Q. Is that island in existence now?

A. Yes sir.

Q. What size is it now?

A. It is nearly round and about 80 feet in circumference.

Q. Are there any other islands you remember of, that have changed?

A. There are islands in what is called Island bay where was still some left, but many others have been washed away and one must be very careful going through there with boats not to run aground.

Q. Is that all you remember?

A. I know plenty more.

Q. Are there any others that have disappeared?

A. There are many that have disappeared, and others that were very large that are very small today.

Q. Did you know Last island?

A. Yes sir.

Q. Did you ever know it to be a summer resort?

A. Yes sir.

Q. Was there a hotel built there?

A. Yes sir.

Q. Were there cottages there?

A. Yes sir.

Q. Do you remember the storm that took place that washed that hotel and cottages away?

A. Yes sir.

Q. Do you remember the year?

A. Yes sir.

Q. What year was it?

A. 1856.

Q. Is that island any longer inhabitable?

A. Yes sir, the island is habitable, it is inhabited by a few colored people raising cattle there.

Q. How large is it now?

A. It has been a long time since I went ashore there.

Q. Is it as large as it was in 1856?

A. It is not as large.

Q. Can you state about the difference in size?

A. Not for several years have I gone ashore there.

Q. Is it used for a summer resort?

A. No sir.

Q. Do you know Caillou island.

A. Yes sir.

Q. Did you ever know Caillou island to be a pleasure resort?

A. Yes sir.

Q. How large was it then?

A. The island was about three miles long and about 15 acres wide.

Q. When was that when you knew it to be 3 miles long and 15 acres wide?

A. In 1853.

Q. How large is it now?

A. I could not say; it has been a long time since I have
458 been ashore there.

Q. How large was it when you were last there?

A. A good deal had been eaten away since the last time I was there. I calculate it was about from six to eight acres wide.

Q. How long?

A. For the length there was not much difference.

Q. Can you tell us what year that was that you were there last that you discovered this difference?

A. In 1896 was the last time I was there.

Q. Have you noticed any change in the coast line during the period of time that you have been testifying about?

A. Yes sir, a great deal.

Q. Please to tell us what changes you noticed along the coast?

A. I went into a bayou inside of the gulf fishing oysters, it has been four years ago, and in the month of July last I went in again to fish oysters, but the sand had filled in that bayou.

Q. Did you find any places along the coast where there were any cuts made by bayous formed, that did not exist when you first knew the country?

A. No sir, I did not find anything of that kind.

Q. Did you ever fish oysters in the marshes of south Louisiana?

A. Yes sir.

Q. Whereabouts?

A. Sometimes in the northern part, sometimes in the southern, wherever I could get the oysters in the marsh.

Q. Was that condition that you have been testifying about concerning the disappearance of islands along the coast as far west as Timbalier bay noticeable by you, further west than Timbalier bay?

A. The conditions were the same on the east as they were on the west of Timbalier bay.

Q. Did I understand you to say just now that you fished oysters as far west as Atchafalaya river where it empties into the Gulf?

A. Yes sir; in Four League bay.

Q. How far is that from Atchafalaya river?

A. About 15 or 18 miles west of Atchafalaya river.

Q. Did you find along that coast from Timbalier bay to that point any islands that had disappeared or washed away?

A. I did not take any notice of whether there was any islands washed away. I have not been there often enough for some years to take any notice of it.

Cross-examination.

By Mr. McCLURG :

Q. From what direction would the storms come, that would wash away these islands?

A. Principally from the east.

Q. Is it not true that the most destructive winds to the coast line come from the east?

A. Yes sir, northeast and east.

Q. Do you know anything about Isle à Pitre?

A. No sir.

Q. Or Lake Borgne?

A. No sir.

Q. Have you ever visited that section?

A. No sir. I have gone across Lake Pontchartrain for pleasure and been to Mandeville.

Q. But you have never been in Lake Borgne?

A. No sir.

Q. You know nothing of the conditions over there?

A. No sir.

ADAM DUET, recalled for further cross-examination.

By Mr. McCLURG :

Q. From what direction did the storm of 1867 and 1893 come?

A. They came from the east, the storm of 1867.

Q. Well, how about the storm of 1893?

A. It began from the east and finished with the west, I was in it and stood it all.

Q. Is it not true that the east winds are the most destructive to the shore generally?

A. Yes sir, those are the worst winds.

By Mr. ZACHARIE :

Q. In these storms in the Gulf, from what direction do the winds commence to blow?

A. Always from the northeast they begin, they come from the northeast.

Q. Does the wind change around later?

A. Sometimes there is a counter storm.

Q. Coming from what direction?

A. From the west, northwest.

Q. What is the effect of the first winds coming from the east, in

regard to the waters in the sound. Does it fill up or diminish the water?

A. It begins to swell always in the beginning.

Q. In the sound?

A. In the bayous or in the Gulf?

Q. And when the wind changes to the north or northwest, what is the effect of this water accumulated in this sound in getting out into the Gulf?

A. It returns in the Gulf.

Q. How does it return to the Gulf?

A. After it has been over the ground it diverts its way into the canals and bayous and different streams and finds its way to the Gulf.

Q. These bayous through which it escapes, are they narrow or broad?

A. There are some that are narrow and others that are large. I don't know how many bayous, except Cheniere pass and Grand Terre pass.

Q. With this north or northwest wind blowing, what is the effect upon the southern shore of these islands or land?

A. Part of the island and part of the earth go along with the water that recedes.

JULIEN LABAT, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. Where do you live?

A. In the parish of Terrebonne.

Q. How old are you?

A. I am 44 years old.

Q. How long have you lived in Terrebonne parish?

A. All my life.

Q. How far from the gulf of Mexico do you live?

A. 25 miles.

Q. Have you ever had occasion to go down into the southern part of Terrebonne parish?

A. Yes sir.

Q. To the Gulf?

A. Yes sir.

Q. Have you been down there frequently?

A. Well, I have been down there pretty often.

Q. How long have you been in the habit of visiting the lower Gulf coast of Terrebonne parish?

A. For 20 years.

460 Q. During that period of time have you noticed any change in the conformation of that country?

A. Yes sir.

Q. What change have you noticed?

A. I know several places that have washed away, that used to be islands, and have disappeared.

Q. Can you name some of them, or did they have any names?

A. I know what was called Shark island that has entirely disappeared, there is no more of it there.

Q. How large was it when you knew it?

A. When I knew it it was about, I suppose two or three acres in circumference.

Q. Do you know of any others that you can recall right now?

A. Well, there is one island we call Coon island, that was pretty large—there is a little of it left, but a good deal of it has been washed away.

Q. That condition of things has reference to islands you speak of?

A. Yes sir.

Q. Have you noticed any change or changes in the marsh along the southern coast of Terrebonne parish?

A. Yes sir.

Q. What changes have you noticed?

A. Well, on Bayou Terrebonne, right where I live, it was at one time marsh, you know, prairie, but marsh, and that storm we had in 1888 it cut out bays and bayous and the marsh has entirely disappeared and left bays and bayous in its place.

Q. Bays leading from what into what?

A. Leads, the bays that were formed lead into Lake Bare and from the there out to the Gulf.

Q. You live on the banks of Bayou Terrebonne?

A. Yes sir.

Q. How wide is the ground there from the bayou back to the marsh?

A. Where I live right now, we have a space about one acre of solid ground that is cultivated land, the balance is all marsh.

Q. You have about an acre in width of cultivated land?

A. Yes sir.

Q. Where your residence is?

A. Yes sir.

Q. Do you remember at any time that there was greater in width of soil?

A. Yes sir; I remember when we used to cultivate two acres at least; it was high enough to cultivate two acres deep, but it has gone down and getting too low to cultivate; that was, well, several years ago.

Q. How far is the marsh now from the bayou proper?

A. The marsh from the bayou is about—the low land you mean?

Q. Yes?

A. It is about, I suppose, two acres.

Q. And you say there was a time when you could cultivate two acres?

A. Yes sir.

Q. From the bayou?

A. Yes sir.

Q. And now?

A. That is, from the public road.

Q. And now you can cultivate only one acre?

A. That is all.

Q. And that is owing to what?

A. Well, storms and currents, etc., destroying the land; it looks as if it is being washed away; it is getting lower and lower every year.

Q. Is the water coming closer to you than it was?

A. Yes sir.

Q. How is that water brought there?

A. Generally by storms.

Q. I mean as a permanent thing, how is it brought there from the Gulf?

A. Whenever we have any bad weather, the least little bad weather excites the current and it runs up and overflows by the Gulf water.

Q. Comes in how, by bayous?

A. Yes sir.

Q. Were those bayous there when you first knew the country?

A. Bayou Terrebonne was.

461 A. I am not speaking of Bayou Terrebonne. I am speaking of these bayous that lead the water from the Gulf into that marsh?

A. When I first knew it there were not as many bayous as there are today.

Q. Do you know of any particular point or spot where there was marsh, to your recollection, and which is not marsh now, in the interior of the marshes?

A. Yes sir.

Q. What is there now instead of marsh?

A. Bays and bayous.

Q. What has become of the marsh soil that was there?

A. I couldn't say; it disappeared; I don't know where it went to; it washed away.

Cross-examination.

By Mr. McCLURG:

Q. You are not familiar with the shore line over to the east of this State in Saint Bernard Parish country?

A. No sir.

Q. And this Lake Borgne country?

A. No sir.

Q. You know nothing about what conditions exist over there?

A. No sir.

Q. Did you ever notice the formation of any land by the action of the waters in your section?

A. No sir.

Q. It all disappeared?

A. Yes sir.

E. L. LECOMPTÉ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. How old are you?

A. I am 36.

Q. Where do you reside?

A. In the parish of Terrebonne on Little Caillou.

Q. About how far from the gulf of Mexico?

A. Between 20 and 25 miles.

Q. What is your occupation?

A. I am in the store business right now.

Q. How long have you been engaged in keeping store?

A. Six years.

Q. What did you do before that?

A. Before that I was interested in oyster fishing.

Q. Have you ever fished oysters yourself?

A. Yes sir.

Q. For how long?

A. Sixteen years I followed the trade.

Q. Down in what part of the country?

A. In the parish of Terrebonne.

Q. Out near what places and in what bays and bayous?

A. In Coon Island lake.

Q. Anywhere around Timbalier?

A. On Timbalier; Lake Pelteau.

Q. During the time that you first began fishing oysters and the time that you stopped, did you notice any change at all in the configuration of that country?

A. Yes sir, I found some little change.

Q. In what respect?

A. A few islands have disappeared, but I don't know the names of them except one; and furthermore bayous and
462 bays you know that got bigger than what they were when I first knew them.

Q. Do you know of any that you can name, that have gotten larger?

A. I couldn't exactly tell you the names of the bays.

Q. You know some that have gotten larger?

A. Yes sir.

Q. Is that in the marsh you speak of?

A. Well, yes, it is inside of the marsh, between the lakes you know, in the prairie, soft prairie.

Q. Do you know of any change whatever in the marsh along the coast of Terrebonne parish?

A. Yes sir. On the east side of Little Caillou I found some changes there.

Q. In what respect?

A. That storm of 1888 we had some of this marsh drift away and forms bays for a distance, one from another, and forming little streams, little bayous and connecting those bays together.

Q. In other words do you mean that bays have been formed in the marsh which was solid marsh previous to the storm of 1888?

A. Yes sir, formed by the action of the storm.

Q. Which was not water at the time previous to the storm, bays that have formed in the marsh?

A. Yes sir.

Q. Where these bays are now, since the storm of 1888, what was there previous to the storm where the bays are now?

A. You mean where they are now?

Q. Where these bays are now what was there previous to the storm of 1888, was it marsh or—

A. Yes sir, it was marsh surrounded by soft prairies.

Q. And connected with the Gulf by what?

A. Well, it is connected, those bays, by small streams connect the bays together.

Q. Were those streams there before the storm of 1888?

A. Some of them were, some small streams, and some were not, there were some made by the storm.

Q. And others became larger you say?

A. Yes sir.

Q. By what cause?

A. I suppose by the action of that storm, made them larger, by the heavy current running in there.

Cross-examination.

By Mr. McCLURG :

Q. You say you live in Terrebonne parish?

A. Yes sir.

Q. How far from the mouth of the Mississippi river do you live?

A. I couldn't tell you, I don't know anything about the Mississippi river.

Q. Do you know how far it is from the mouth of the Sabine river?

A. No sir.

Q. Do you know anything about the conditions in the Lake Borgne country on the eastern portion of this State?

A. No sir.

Q. Were you ever on Isle à Pitre?

A. No sir.

Q. Do you know anything about Nine Mile bayou or Turkey bayou, any of those places over there?

A. No sir.

Q. You know nothing about the contour of the eastern shore at all?

A. No sir.

Q. Your country is sinking, I understand, washing away?

A. Yes sir.

Q. The water is encroaching upon you?

A. That is what I understand about it.

Q. How far are you west of the Mississippi river?

A. I don't know, I couldn't tell you.

463 JOHN MCGRAW, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. Where do you live?

A. 1328 Webster street, New Orleans.

Q. How old are you?

A. I am forty nine years old.

Q. You know this territory or area in dispute between the States of Louisiana and Mississippi?

A. I am acquainted with it to a certain extent.

Q. You know the location of it?

A. Yes sir.

Q. Are you the owner or part owner of any land in that part of the country?

A. Yes sir.

Q. With whom?

A. With Charles Sanger, A. L. Hunt, and Charles F. Forsyth.

Q. Would you be able, you think, to locate that part of the ground that you purchased, by examining this map marked Document No. 7?

A. I think so, yes.

Q. Will you please examine this map, then, and indicate on it where your land is located?

A. This is supposed to be the area, I suppose?

Q. Yes?

A. My land is about from this point, here.

Q. You will have to name that because—

A. Well, I will take on the east it is bounded by Jones bayou, there are two Jones bayous, you will notice that is commonly known as Little Jones.

Q. State in what section?

A. On the west boundary, section 21, on the south boundary, section 22; of course on the north boundary, Lake Borgne.

Q. What township is that land in?

A. I can't tell you unless there is anything indicating it here.

Q. Examine the map thoroughly, look at the top of the map, and see if you can't see what township it is in.

A. It is in township 11, south, range east.

Q. Whom did you purchase that land from?

A. From the levee board of the parish of Saint Bernard, I don't know exactly the name of the levee board; Mr. John Dymond is president of it.

Q. How long since you have known that country down there?

A. You mean that section of the country?

Q. Yes, that part of it.

A. Since 1866.

Q. Have you been in the habit, or had occasion to visit that section of that country, frequently or infrequently?

A. Very frequently.

Q. Up to what time?

A. Up until last Sunday.

Q. Since 1866?

A. Yes sir, from time to time.

Q. I mean during the time ranging from 1866 up to the present time?

A. Yes sir.

Q. Have you noticed any changes in the shore or coast line along that section of country during the period you have just mentioned?

A. Yes sir.

Q. What changes have you noticed?

A. Why, the disappearance of islands and the disappearing of the coast in general.

Q. Do you know of any islands that you can name or had they any names?

A. Yes sir, a very prominent island, Saint Joe island, for instance.

Q. Do you know whether Saint Joseph island is in the

464 disputed territory or not?

A. I think it is; that is my recollection. It is adjacent to Half Moon island in the disputed territory, that is within about two miles of Half Moon island.

Q. Any other islands you have noticed that have disappeared?

A. Well, no, particular island, no sir, nothing except the coast, I have noticed the coast has disappeared and has changed its conformation.

Q. The coast line?

A. Yes sir.

Q. In regard to what?

A. Washing away.

Q. Do you know where the 16th section is which under the law belongs to the public schools, or the proceeds of which are to be devoted to public school purposes?

A. Yes sir, that is at the mouth of Bayou Johnson, commonly known as Turkey bayou; here it is, 16 section.

Q. Marked on this Document No. 7 as being near what bayou?

A. Bayou Jones.

Q. Which Bayou Jones, the one to the east or west, there are two Bayou Jones described on this map?

A. West Bayou Jones.

Q. When you first knew this 16 section, did you have any desire to acquire it?

A. We did, but we could not get it because it was set aside for school land which could not be sold by the levee board.

Q. How much of that 16 section was there, if you are able to state, at the time you wanted to purchase it?

A. There was a portion of it, about probably 50 or 75 feet may be more than that; there was a shell bank there, that was the reason we wanted to buy it.

Q. How much of it is there now?

A. None.

Q. Where is it?

A. It is washed away.

Q. Gone into what?

A. Into the sea or Lake Borgne.

Q. You say that was about how much?

A. About 75 feet of it.

Q. 75 feet in area?

A. Well, in width.

Q. You mean from the Gulf extending back in towards the marsh?

A. Yes, into the marsh.

Q. Are you able to state that there has been a washing away of 75 feet at that point?

A. Yes sir.

Q. Within what period of time?

A. About four years, five years at the outside. I can state why I know that.

Q. State your reasons?

A. We had a stake on the point, put there by the surveyor.

Q. What point, if you are able to indicate it on this map, designate the point?

A. In the point of the 16 section and the 21 section, what may be known as the north point of 21 section, right in here.

Q. Was it in Bayou Jones?

A. Yes sir, on the bank of Bayou Jones.

Q. West Bayou Jones?

A. On the east bank of West Bayou Jones.

Q. You did what?

A. We had a stake there with a sign on it to notify the public general that we had bought the land on that bayou; that stake was about 10 or 15 feet inside of the shore of Bayou Jones at the mouth today that is in the water about 20 feet.

Q. The same stake?

A. Yes sir. In other words we planted a stake here and here the bayou, the point came around here and the point is this way now.

Q. Have you noticed any other changes along the coast in any other part of the land you purchased?

A. Yes sir I can remember the time when there was a good sized mud lump in Grand pass on which trees were on; today that doesn't exist.

463 Q. Is that any part of your purchase?

A. No sir; that is to the east of my purchase.

Q. You say at Grand pass there were trees?

A. On the bank at Grand pass, on the east bank of Grand pass there were some oak trees.

Q. Large or small.

A. Scrub oak, good size trees, about 20 feet high.

Q. Where are they now?

A. They are washed into the pass.

Q. By the widening of the pass?

A. Yes sir.

Q. Caused by what?

A. By the action of the water. I can remember the time when you could throw a line across the Creole gap. You could stand on one bank and toss a line on the other shore; you can't do it today.

Q. How wide is it now?

A. It is a half or a quarter of a mile wide.

Q. How wide was it at that time?

A. Probably 75, or 100 feet at the outside.

Q. Have you noticed any change in other bays or openings, outside of Creole gap?

A. Right near Isle à Pitre the shore is washed considerably; it is not as level and trim, the mud flats are all in the water now; formerly there used to be a ridge before you reached the mud flat, between the mud flats and the water.

Q. Have you noticed any change in Three Mile bayou?

A. Yes sir; it has widened considerably, I can't say how much to the foot but it has widened considerably; I know Petite pass is also wider than it was, further to the westward of Three Mile bayou, which is in the disputed territory.

Cross-examination.

By Mr. McClurg:

Q. How long, to your knowledge, have the changes of which you have spoken, been going on?

A. Between 1866 and the present time.

Q. At the same rate you think?

A. According to the action of the water, the degree of the storm, if one storm is greater than another of course the washing away would be greater.

Q. At that rate, your land and others, would be largely under water within the next ten or 11 years?

A. Yes sir; that is one of the reasons that we bought as much of the land we did, so as to have sufficient.

Q. You bought it from the Lake Borgne Levee board?

A. Yes sir.

Q. How many acres did you buy?

A. About 4500 acres.

Q. How much did you pay?

A. I think it was 15 cents an acre, either 15 or 12½.

Q. And got a quit claim deed?

A. Yes sir.

Q. The board never undertook to warrant you a title to that land?

A. The title would speak for itself.

Q. I notice this map from which you have testified, No. 7, is marked to the northward from the lands about which you have testified, "Mexican gulf or Grand pass," and out to the westward on the margin is Lake Borgne. What is that water that is marked "Mexican gulf or Grand pass" called now?

A. It is commonly known as the Mississippi sound.

Q. Is this territory in which your land is located, between Petite pass and Isle à Pitre?

A. Yes sir, it is along there, just half way.

Q. On the northern portion—

A. On the southern shore of what is called Mississippi sound.

Q. Do you know or can you approximate about how far it is from your land, due north to the Mississippi shore across the sound?

A. It is commonly known to be about 22 miles, I think that is the general—of course I am only giving you what the local navigators of that coast claim, they claim it to be 22 miles.

Q. Then you understand, do you not, that your lands, or that portion of the country immediately surrounding your purchase, is not in the disputed territory?

A. I do understand it is not.

Q. Yes?

A. I do understand that it is.

Q. Mississippi has never claimed to run any further south than 18 miles from her shore?

A. From all the maps that I saw exhibited yesterday, that land is in that area.

Q. What map was that, do you remember?

A. I think you called it map No. 6, some map with red lines on it, I don't remember the number.

By Judge GUION:

Q. You mean that map that the Mississippi counsel had?

A. Yes, used in Mr. Dukate's testimony.

By Mr. McCLURG:

Q. Do you know where Mr. Dukate's purchase is?

A. Pirate point.

Q. Yes?

A. Yes sir.

Q. What direction is that from your purchase?

A. From the mouth of Bayou Johnson it would be about due south, I should imagine.

Q. About how far?

A. About five or six miles.

Q. And the map that you examined yesterday indicated that his purchase was within the disputed territory?

A. Yes sir, I so understood.

Q. Then it must be less than 18 miles.

A. I made that proviso when I said that was the local claim, the estimate of the local navigators along that coast.

Q. Do you know when that country down there was laid off into townships and ranges?

A. No sir.

Q. Is it not true that it has been within the last few years?

A. I do not think so.

Q. You have no personal information as to when it was done?

A. No sir. There is a map there that shows the townships, there is a date to it?

Q. It shows it was surveyed in 1847.

A. That shows townships, and that survey was made in 1847 according to that map.

Q. Did you have an abstract of the title to this land when you purchased it?

A. I do not think we did, I can't say positively about it.

Redirect examination.

By Judge GUION:

Q. You bought that land for the purpose of cultivating what?

A. Oysters.

Q. Then you did not buy it for the soil?

A. No sir.

Q. But for the water?

A. Yes sir.

Q. That you think you acquired by reason of the purchase of the surrounding land?

A. Yes sir.

Q. Did I understand you to say that you had been along that coast from Petite pass, as far as Isle à Pitre?

467 A. I have been on that coast, I have been all along the coast from Lake Maurepas to Sand island in—

Q. I don't care about the whole of that. But I want to know if you have visited and followed the coast from Petite pass or Malheureux point to Isle à Pitre?

A. Yes sir.

Q. Is there a shore line well defined along there?

A. With broken lagoon and bayous.

Q. What is the distance, do you know, from Petite pass, for instance, to Isle à Pitre; have you any idea?

A. I imagine it is about 18 or 20 miles.

Q. And there is a shore line there well defined?

A. Yes sir.

Q. Broken by what?

A. Broken by such as Nine Mile bayou, Three Mile bayou, Bayou Johnson.

Q. And other bayous?

A. Little Bayou Johnson, Grand pass, and Creole gap.

Q. And others?

A. And others smaller.

Q. Do you know anything about Creole gap, how it was made?

A. Only from hearsay; only from the talk among the old time fishermen.

Q. Are there any living witnesses who can testify to it?

A. I don't know of any particularly.

Q. Go ahead and state what you heard, as counsel for Mississippi has no objection, and state what information you have concerning this Creole gap?

A. I heard it talked about among these local fishermen that it was dug by some man for a convenient cut off from what is known as Lake Borgne side over into the Gulf so as to save the time of going around through Grand pass or going around Isle à Pitre.

Recross-examination.

By Mr. McCLURG:

Q. How far is it from Grand pass?

A. About three miles.

Q. There was a way through Grand pass?

A. Yes sir.

By Judge GUION :

Q. You say that you have been told this by old fishermen ?

A. Yes sir.

Q. Were you told how long ago this had been done ?

A. No sir, it was just in ordinary conversation.

Q. That it had been dug out ?

A. Yes sir.

Q. How wide is it now ?

A. It is from a half to $\frac{3}{4}$ of a mile wide now.

Q. Have you any idea as to its depth ?

A. There is nine or ten feet of water running through it.

By Mr. McCLURG :

Q. Nine Mile bayou has been there always, to your knowledge ?

A. Yes sir. Johnson bayou on the United States survey is known as Turkey bayou, but the local term for it is Johnson bayou or Jones bayou.

Q. How deep is Jones bayou ?

A. Well, as it shows there, shows on this map, here, you see there are two here, there is West Jones and East Jones, and this area here is about all washed away, the West Bayou Jones is all washed away, there is nothing there except an open gap now.

A. I don't understand how you can wash a bayou away ?

A. The bank has washed away and consequently the bayou goes to-

Q. There is no bayou there ?

A. No sir, except a little bayou.

Q. How deep is East Jones bayou ?

A. In high tide it may be four feet of water in there.

468 Q. Connects Mississippi sound with what ?

A. It goes back into Jack Williams bay in here.

Q. That is a large body of water ?

A. Yes sir. It is only navigated by very light draft boats, it is all full of mud flats, it is hardly navigable.

Q. I want to know what it enters into the back here ?

A. I think Jack Williams bay.

At this stage of the proceedings, the hearing was adjourned by the commissioner, for recess, to be resumed at the same place on the same date, at the hour of 2.15 p. m.

Resumption of Proceedings.

Pursuant to adjournment, the hearing was resumed by the commissioner at the same place and date, at the appointed hour of 2.15 p. m. All parties being present.

FRANK HASTINGS MORTIMER,
Commissioner.

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Volume II.

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Frank H. Mortimer, Commissioner.

J. B. BAYLOR, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DRYMOND:

Q. Where do you reside?

A. Virginia is my home.

Q. Where are you generally located?

A. That I can't tell; I have been in the Coast Survey service since 1873 and I go wherever I am ordered. I have been in Washington a great deal.

Q. What Coast Survey?

A. The United States Coast and Geodetic Survey.

Q. How long have you been connected with that Coast and Geodetic Survey?

A. It has been so long—I may say since 1873, I took the scientific and engineering degrees at the University of Virginia and got in the Coast Survey by competitive examination in 1873 and I have been there ever since.

Q. You say you graduated from the University of Virginia?

A. I took my engineering and scientific degrees there.

Q. Have you been continuously in the Coast Survey since that time?

A. Yes sir. Sometimes I have been detailed for special work.

471 For instance, I made the sea survey of the State of Virginia; I was for two or three years on the Commission of the United States Supreme Court in connection with the Tennessee and Virginia boundary.

Q. Have you ever had any other official duties in the line of boundaries between States beyond the case of Tennessee vs. Virginia or Virginia vs. Tennessee?

A. I was one of the engineers to re-establish the boundary between New York and Pennsylvania, and also between Maryland and Virginia.

Q. Did you visit Louisiana last year?

A. Yes sir.

Q. For what purpose?

A. I came down here under the instructions from my chief, superintendent of the United States Coast and Geodetic Survey at the request of the Commissioner of Fish and Fisheries, to take up certain work in connection with your oyster department, certain points as to sea survey.

Q. Do you know whether the Commissioner of Fish and Fisheries had received a request from any official body in this State for this survey, and if so what body?

A. Yes sir; I saw a letter from the Oyster Commission of Louisiana to the Commissioner of Fish and Fisheries.

Q. Was that the official body that you speak of as having requested you to come here, the Oyster Commission of Louisiana?

A. Indirectly, I suppose you did, you were anxious you should get national assistance in surveying your oyster grounds.

Q. And it was for that purpose that you made your trip last year?

A. Yes sir.

Q. In what part of the country was your scene of action or labors extended?

A. Primarily, I believe these surveys cannot be made accurately unless you have them tried by a system of triangulation to well established points. On that account I went back as far as the lighthouse at Biloxi and the lighthouse at Ship island.

Q. Biloxi, what State?

A. State of Mississippi, and Ship island in the State of Mississippi. I had to go back there because the old points, I couldn't recover any of the old points, and had to go back there to be certain of my position.

Q. When you say, old points you could not recover, what points do you mean?

A. I mean the trigonometrical points that were established in the survey of the coast, along the coast line from Malheureux point to Isle à Pitre.

Q. Did you make a survey of any of those points, before you went back to the Biloxi and Ship Island lighthouses?

A. Yes sir.

Q. Were you able to find any of the old Coast Survey points?

A. No sir; I was not able to find them.

Q. In this survey work you did, I understand you started from what you recognized to be well established points?

A. Yes sir.

Q. When were those points established?

A. Well, the Biloxi light house was established way back, somewhere I suppose in the '50's, the new lighthouse at Ship island has been recently established, but it was connected rigorously with the old lighthouse at Ship island which had been washed away.

Q. Will you kindly look at this map and state what it is?

A. Well, this is what we call one of our regular Coast Survey charts published for the use of mariners.

Q. When was this chart published?

A. It was published in March 1904.

Q. By whom?

A. By the superintendent of the United States Coast and Geodetic Survey.

Q. Would that chart contain the very oldest information of the department in regard to the area of which it speaks or shows?

A. It would not contain all the information in hand. It does not mean that there has been a complete re-survey of all this territory at the time this chart was published; but it contains all the information that was available at that time.

Q. Will you please look at this map which we will now for the purpose of identification mark map No. 17, and state whether you recognize upon it any of the points established by you in your recent survey concerning which you have been testifying?

A. Yes sir; I see the marks.

Q. Will you please designate now, so that the stenographer can get it, where these points were established by you?

A. Not only were the points established, but signal, observing towers were built over every one of them.

Q. Will you please designate by word, where they were, beginning at the Malheureux point?

A. By the adoption of a name, which is usual, to try and indicate in a certain way their connection with well known points. The first point that I established to the westward, that is, nearest Malheureux point, I called Bayou point.

Q. Near what bayou is that?

A. Near the bayou that has no recognized name on our chart.

Q. What was the next one you established?

A. It is—shall I give you the distance, how far it is from Blind pass?

Q. Yes. Give us the distance from Blind pass?

A. Yes sir, that is a well known point, marked with terra cotta pipes, and the signal tower built over it, between 30 and 40 feet high; it is about a mile and a half west of what they call Blind pass; that seems to be a well known point all along the coast.

Q. Where is the next point you established?

A. The next point I established west of Three Mile bayou, just west of Three Mile bayou.

Q. Where is the point you established?

A. That point is called Three Mile, just to give a short name because it has to be written very frequently in the records. The point I established was Turkey bayou.

Q. Was that close to Turkey bayou?

A. I can give you the exact distance, not the exact but very close. It is about $\frac{1}{2}$ of a mile west of Turkey bayou.

Q. Where was the next point you established?

473 A. The next point was established just west of Grand pas coast line from Malheureux point to Isle à Pitre?

A. Yes sir. There was another point which I called Cabbage.

Q. Where was that established?

A. Cabbage reef that was the name, there is a place called Cabbage reef, it is on a point of land about two miles and a quarter west of the end of Isle à Pitre.

Q. West of which end.

A. Of the eastern end.

Q. Did you establish any other points on that coast between Malheureux point and Isle à Pitre?

A. I determined accurately, for the first time since it was built, Merrill Shoal Bank light; when I say accurately, I determined it by trigonometrical methods or geodetic methods; I determined accurately for the first time since it was rebuilt, by trigonometrical methods, Cat Island light.

Q. Is Cat Island light on the western end—

A. No sir, it has washed away; it stands out in the water on piles a portion of the island is washed away.

Q. How much of the island is washed away from the light house?

A. Not more than—I don't recollect with certainty, but I should not say more than two or three hundred feet, about 300 feet. I also determined Saint Joseph beacon, for the first time accurately, since it was rebuilt. I also determined accurately for the first time since it was rebuilt Lake Borgne light. I also built a signal and marked it with terra cotta pipes, on Grand island, what is known as Grand island on our chart.

Q. Is that island known by the name of Half Moon island in the locality in which it is situated, among the people?

A. Yes sir; I think it is sometimes called Half Moon island.

Q. Were there any other points located by you in this immediate locality?

A. None with trigonometrical precision.

Q. All of these—

A. Let me see. I must modify that. I also built a signal up here by Pitcher point, and determined that accurately, on the main land of Mississippi.

Q. How far east from Henderson point at the mouth of Bay St. Louis?

A. I will have to measure that. Henderson point is a well deter-

mined point; that Pitcher point is very well known all along the coast, it is about seven statute miles east of Henderson point.

Q. Now, what relations, if any, have these points established by you on the coast between Malheureux point and Isle à Pitre, to the original points; have you any data?

A. Yes sir, I have data. Those old points, most of them are gone, in my opinion, from the way in which they were marked. They were marked with granite stones, many of them were, and these graine stones are just about the right size and weight for the fishermen to use as ballast, and I think they have largely been taken up bodily and carried away by these fishermen.

Q. Have you any reason to suppose that they were not carried away by storms?

A. No sir. But we have discovered, where our stations have been marked all along the Atlantic coast with stones that can be handled or taken up, that the fishermen will take them not knowing the necessity that the points should be preserved, they will take them as ballast, especially in a land where there is no rock; they don't do it so much on the rock bound coast of New England because they have so much other rock.

Q. Did you, on any of the expeditions you were making in connection with this survey, see any boat with that character of ballast?

A. No sir.

Q. Therefore, as I understand, it is a pure conjecture on your part?

A. Purely a conjecture; except, as I stated before, we have seen boats with our stones in them but not in this locality.

Q. Did you take any steps by trigonometrical methods, to locate any of these points which had been established by the prior survey made in this locality?

A. Yes sir; I took angles and examined that marsh to try and find them.

Q. Do you know, or have you any data, as to how far back from the coast line these stones were placed at the time they were originally located by the surveyors that were then doing this work?

A. You mean the coast line between Malheureux point and Isle à Pitre?

A. Yes sir.

Q. Yes sir; their stations were fully examined, giving their distance from the shore line, I had that description with me.

Q. Did you determine by any trigonometrical method where this point should be in any one instance?

A. I determined within a few yards or feet, something like that.

Q. How did that point compare as to its distance from the shore line, with the records which you had showing the original distance from that point to the shore line?

A. Well, as a rule, there has been no very marked change in the last 50 years.

Q. Has there been any change?

A. Yes sir, there have been changes; in some places the shore has washed away, but to no great extent.

Q. What would you call a great change?

A. I believe a great change would be say 300 or 400 feet.

Q. What is the maximum change that you noticed in these points established by you?

A. Well, I did not go into that question very closely; but I should not think, I could safely say I did not find any change of over 300 feet in 50 years.

Q. Would that apply to the coast line generally, from Malheureux point to Isle à Pitre?

A. Yes sir, generally; there may be instances where it is washed away more than that; but, as a general proposition, my work showed conclusively to my mind, that there has been no marked change in regard to the washing away of that coast in 50 years. We have accurate work on trigonometrical methods running back to about 1848; most of those points were established in 1855, that I examined there.

Q. Did any of your excursions carry you into the interior south of this line extending from Malheureux point to Isle à Pitre?

A. No sir; I did not have an opportunity to go south of that coast at all.

Q. Would you be prepared to state, or consider yourself in a position to state, whether any changes had or had not occurred in that section, during the past 50 years?

A. Most certainly changes have occurred.

Q. But are you able to state with definiteness any particular change?

A. No, I cannot specify any particular change.

Q. Now, Mr. Baylor, referring to this map marked map No. 475 17, will you please give the length of the coast line from Malheureux point to Isle à Pitre?

A. I will have to measure it from the chart itself.

Q. I desire you to do that?

A. That is following the coast line; it is 17 miles to Grand pass.

Q. Does Grand pass separate Isle à Pitre from the balance of that territory?

A. So I have always considered it, yes sir.

Q. How long is Isle à Pitre?

A. It is not quite six miles long, that is statute miles.

Q. So, that, from Malheureux point to the most eastern extremity of Isle à Pitre, would be 23 miles?

A. About 23 statute miles.

Q. What considerable bayous, if any, intersect or pass or cut that coast line?

A. When you say considerable bayous, do you mean bayous that go into the interior bays, do you not?

Q. Yes.

A. Well, you have Nine Mile bayou, Three Mile bayou, Johnson bayou, Turkey bayou, Drum bayou, Grand pass which might be called a bayou, Bayou Pierre, Elephant bayou, Creole gap. Those are all the principal bayous. There are nine bayous that go into the interior waters.

Q. Have you made a trip from Malheureux point to Grand pass which separates Isle à Pitre from the balance of this land?

A. How do you mean?

A. Have you gone along that coast line?

A. Yes sir; I have been all along it in boats and landed too at various places all along that coast.

Q. Is there, or not, a distinct and well defined coast line between Malheureux point and Grand pass?

A. Well, it is as well defined as any of your coast line in this region, near the mouth of the Mississippi river, it is a hard ridge next the outer beach composed,—due to the sand and shells that are shed up and then behind that you have a soft boggy marsh.

Q. Can this coast line be seen distinctly from a vessel coursing at stretch—

A. Yes sir, if you coast close enough.

Q. How close need you be in order—

A. In favorable weather?

Q. Yes to determine that line?

A. I think two miles, I would say two miles a person might see it without any difficulty.

Q. Is this area grown up with sea grass?

A. Yes sir, sea grass.

Q. To what height does that grass rise?

A. I should not think it was quite six or eight feet, in some places six and eight feet, with the weeds and grass combined, in some places there are weeds.

Q. What is the distance from the mouth of Blind pass, north to Moon island or Grand island?

A. About $5\frac{1}{2}$ miles.

Q. To what portion of Grand island?

A. To the southern portion, $5\frac{1}{2}$ statute miles.

Q. Will you please now make as accurate as you can, a calculation showing the distance from your beacon marked bayou, to the northern line of Grand island?

A. About $4\frac{1}{2}$ statute miles.

Q. Will you please look at this map which is marked Exhibit A, take the scale on it and start from a point corresponding to your bayou beacon and ascertain the distance to the southern portion of Grand island?

A. About $4\frac{1}{2}$ miles.

Q. What is the distance from Malheureux point to Lake Borgne house at the southern extremity of lower Point Clear?

A. $\frac{1}{4}$ miles.

Q. I understand the last measurement taken by you was made from the composite chart which we have called map No. 17?

A. Yes sir.

Q. Will you please look at this map which is marked Exhibit A being part of the evidence for the State of Mississippi and state the distance from Malheureux point to the mouth of Pearl river as shown on this map?

A. I would say it was seven miles, what I would call the mouth.

Q. What is the distance on this chart, map No. 17, from Malheureux point to the mouth of Pearl river?

A. Six and a half miles, what I would call the mouth.

Q. Have you had occasion, in the examinations which you have made or from the data which you have as a member of this United States Coast and Geodetic Survey, that would enable you to state where the deep water channel is which runs out of the mouth of Pearl river and finds its way between Cat island and Isle à Pitre?

A. Yes sir, we have it laid down on this chart for the benefit of mariners with courses given.

Q. Will you please indicate by the letters C C and place thereon with a pencil the line which is the deep water channel concerning which you have just spoken? (Witness indicates.)

Q. Is there a well defined deep water channel between the mouth of Pearl river and the gulf of Mexico?

A. Yes sir; I should say there was.

Q. Do you know of any other deep water channel by which the waters of Pearl river would reach the gulf of Mexico?

A. No, I don't know of a channel sufficiently deep for what we call seafaring vessels to go.

Q. Is there any channel that would extend down through the Louisiana marshes, of a character to be recognized as a channel?

A. No sir, none that I know of.

Q. Have you ever heard of there being any such channel?

A. None sufficiently deep for seagoing vessels.

Q. Have you any interest at all in this controversy pending between the State of Louisiana and the State of Mississippi?

A. Not the remotest, except as a citizen of the United States I would be glad to see the matter settled; that is all the interest I have in the matter.

Q. In your position as a boundary commissioner between the States of Virginia and Tennessee, in which State were you born?

A. I was born in Virginia. And the decree under which I was appointed named me as a Virginian, I was from Virginia.

Q. In whose favor did you decide that controversy?

A. I decided against my own State on the main points at issue.

Q. Was that because your examination of the matter showed, or your opinion, that your final conclusion was a correct one?

A. I decided that way although the regular boundary of my State gave an entirely different boundary, because the decree of the Supreme Court clearly ordered me, instructed me to restore the bound-

ary marked in a certain way 100 years ago, it was clearly stated and after an extensive examination of the marks and readings, I was compelled by the facts, as I found them, to go against my own State.

Q. Are you at all familiar with this controversy between the State of Mississippi and the State of Louisiana?

477 A. Not at all except in what I have heard of it since I have been here and reading a report since I was down here, made by Mr. Hodgkins, of the Coast Survey in which he made certain examinations and made certain reports. What little I know about it was by reading that report.

Q. Do you know Mr. Hodgkins?

A. Yes sir, he was associated with me; I have known him for years. I had met the attorney general of Virginia and the governor of the State and they were kind enough to ask me to suggest a Coast Survey man whom I thought was a fair minded man, who was not a resident of either State, and I suggested Mr. Hodgkins, he was associated with me in the boundary dispute between Virginia and Maryland. He made an impression upon me as being a fair minded man.

Mr. TAYLOR: I except to this testimony as being irrelevant, all testimony as to Mr. Baylor's opinion of Mr. Hodgkins, and Mr. Baylor's reasons for deciding another case which has no connection with this excepted to as irrelevant.

Q. I understand that Mr. Hodgkins was associated with you in his Virginia Tennessee boundary dispute?

A. He was chairman of the commission.

Q. Do you know of any other boundary controversy with which Mr. Hodgkins has been identified?

A. Yes sir, I know quite a number.

Q. Would you mention them?

A. Missouri and Iowa, Maryland and Virginia. He has been recently employed in restoring the Mason and Dixon line between Maryland and Pennsylvania. He had charge of the charts in the boundary dispute between Canada and the United States, the Alaskan boundary dispute.

Q. Was he in charge of the charts that were used or prepared by the United States Government, by the United States Coast and Geodetic Survey, or were the charts prepared by that department?

A. Yes sir, the charts were prepared, made out, not under his own charge because the superintendent was in charge, but he had general supervision of them under the instructions of the Assistant Secretary of State as I take it. Of course that is all a matter of official record.

Q. Do you consider that you are an expert on boundaries between States?

A. No; I do not. I have devoted some attention to it; I have employed on the three cases that I told you of, one between

Pennsylvania and New York, Maryland and Virginia, then I had the honor to represent the Supreme Court as a commissioner on this Tennessee and Virginia boundary.

Q. In order to come to any conclusion of a fact of that character would it be necessary for you to familiarize yourself thoroughly with the facts and the laws etc. bearing on the subject?

A. Before I came to any decision, if I had a judicial decision to give; surely it is necessary.

Q. And before you could form any opinion would you consider it would be necessary—

A. It would depend entirely on what I had to base my opinion as an expert, what phases of boundary, there are a great many phases of a boundary question, almost as many phases as there are shades of light.

478 Q. Would you consider yourself familiar enough with the facts of this case pending as it is between the States of Louisiana and Mississippi to express an opinion as expert on the subject of the proper boundary between the two States?

Mr. TAYLOR: Exception is urged to that question as incompetent and irrelevant.

A. I don't think I have studied the subject sufficiently deeply to place an absolute opinion.

Q. Mr. Baylor, have you had occasion to notice the character of the soil forming the land which composes the shore line from Malheureux point to Isle à Pitre?

A. Yes, sir; I have. I walked over a good deal of it and ought to know it.

Q. Will you please look at this sample of earth or soil which is marked sample No. 1 and state whether you recognize that to be similar to the soil you have seen along the shore—

A. Very similar to the soil between Malheureux point and Isle à Pitre.

Q. Have you ever noticed the character of the soil composing the western end of Cat island?

A. Yes sir.

Q. Will you please look at this sample marked sample No. 2 and state whether you recognize it to be of a character of soil similar to the soil at the western end of Cat island?

A. It seems to be the same.

Q. Are you sufficiently acquainted with the characters of soil to state whether there is any difference between these two samples which have been shown you?

A. There is a radical difference it seems to me.

Q. Do they belong to the same or different geological formations?

A. I should say different. I am not an expert geologist, although I graduated as a geologist from the University of Virginia I have not kept up with the science since leaving college.

Q. Please look at this map marked map No. 17 concerning which you have testified and state the distance across the channel from the eastern end of Isle à Pitre to the western point of South spit on Cat island.

A. How far is it across that channel; is that what you want?

Q. Yes?

A. About $3\frac{1}{2}$ statute miles.

Q. Have you had occasion to notice the character of soil on Ship island?

A. I have been over all the western end of Ship island.

Q. Have you ever noticed the character of soil on Horn island?

A. What do you call Horn island?

A. The next large island east of Ship island?

A. I have never been there; I have been on Ship island and Cat island.

Q. Have you ever noticed the character of soil on Deer island just south of Biloxi?

A. No, sir; I have only been on Ship island and Cat island, those are the only two islands I have been on.

A. How does the soil of Cat island and Ship island compare with these two samples Nos. 1 and 2, with which sample is it the most similar?

A. It is the most similar to sample No. 2.

479 Cross-examination.

By Mr. TAYLOR:

Q. What is the usual definition given by geographers to an island. What is an island from the standpoint of physical geography?

A. An island is a body of land surrounded by water.

Q. Well, now, let us begin from Nine Mile bayou and take the piece of land that is bounded on the west by Nine Mile bayou and on the east by Three Mile bayou and on the north by Mississippi sound and on the south by Nine Mile bay. Under the ordinary definition of physical geography, isn't that an island, a piece of land surrounded by water?

A. Yes sir, that is an island.

Q. Isn't it a piece of land surrounded by water?

A. Yes sir, but, then, as far as that is concerned I think a good many things might be called islands.

Q. I am going under the accepted and ordinary definition of an island as given by physical geography, a piece of land surrounded by water. Can't a craft sail all around that piece of land, a craft of moderate draft?

A. Well, a craft can sail around a good deal of that portion of Louisiana.

Q. I ask you this particular question; can't a craft sail all around

483 By Mr. TAYLOR :

Q. And that would say what actual change had taken place?

A. Every time a new survey was made. That would give us the data of the facts and give us the advantage of each subsequent one combined. We have them on file there.

By Mr. DYMOND :

Q. In order for this data to be obtained in the way you suggest, wouldn't it be necessary to know today the points at which the original measurements were taken in order to figure to day and calculate the present distance between those two same points?

A. Yes sir, you would have to have surveys made covering that territory if you want to compare the present actual conditions with the old conditions.

Q. Has any work that you have done been of such a definite character as to show the changes that have taken place?

A. Only along the north coast line.

Q. Have you had any of these points re-established, the points as they existed from 1847 to 1853?

A. I re-established them very closely in connection with my triangulation.

Q. Did you put up your new beacons on exactly the same points where the old beacons were?

A. No sir.

Q. What is there by which any one would know the location of old beacons with sufficient certainty to calculate the present distance from that old beacon to any definite point to show the erosion?

A. I can tell within a fraction of a yard just how far every old beacon was from the present beacon. I have sufficient data.

Q. Could you locate where an old beacon was and then calculate the distance from that old beacon in a north line to the shore line as it exists to day?

A. Yes sir; I believe I can do that.

Q. Did you do that in any instance?

A. Only in a general way.

Q. Did you do it in any particular instance, and figure that the old beacon was put a definite number of feet from the shore line?

A. No; I did not; except within a—in a general way I did.

Q. But in a particular way, to determine in exact feet the distance of the location of any old beacon?

A. I carried descriptions of these old stations, how far they were within a few feet of the shore line.

Q. No; see if you understand me; let us suppose that by the data which you had, you located the exact spot or within three or four feet of the exact spot, where the beacon was placed by the surveying party way back in 1855, did you take the distance from that spot by measurement or by triangulation to the east shore or the—

A. I couldn't find the old beacons, they were not there to find, but their position with reference to my new points—

484 Q. You knew where they ought to be?

A. With reference to my new points.

Q. But did you, in any instance, measure the distance from the place where the beacon ought to be, to the present north shore line of the Louisiana marsh?

A. I didn't have occasion to do it; I had the data computed and didn't have occasion to do it.

Q. Therefore you have never figured out in any instance, the amount of erosion that has taken place on the shore line?

A. I have never figured it out absolutely; I know approximately from the general trend of the coast and the general present condition of the coast line and the distance between my beacons and the old beacons.

Q. Was I correct in understanding you to say that there might have occurred erosion on this shore line at points, to the extent of not exceeding 300 feet?

A. I think, as a general rule that the charts here seem to indicate there has not been erosion over 300 feet.

Q. You would not be prepared to say that there had been no erosion?

A. No sir; I have no doubt there has been erosion in some places and the shore has been washed in other places, but there has been no marked changes.

Q. Are you familiar with the geological formation of this section of the country?

A. Yes sir; I am familiar with it.

Q. Do you know how it was formed?

A. I don't know how it was formed, but I believe it was formed by the sediment from the Mississippi river.

Q. What is the tendency of this sediment when it is deposited by the river or by the water coming from the river, is the tendency to solidify or to expand?

A. I am not prepared to say on that point. I should think it would be in time solidified.

Q. Would you be prepared to say whether there had or had not been any subsidence in this area concerning which you have been examined a moment ago by counsel for Mississippi?

A. I had no occasion to go into the question of subsidence. I have no doubt that that whole coast has sunk to a certain extent; the evidence of it is, the fact that you find stumps of trees and things down below the surface. I did not find any there because I made no examination on that line.

Q. Would you be prepared to say, in detail, what effect that had had upon the topography of this country since 1812?

A. No I would not say what effect it had.

Q. You were examined in regard to map Exhibit A, by counsel for the State of Mississippi a moment ago, with I understand, a

knowledge on your part of the effect produced by storms and the effect that would be produced by subsidence. Are you prepared to say that the red ink line which counsel showed you, represents the conditions as they existed in 1812?

A. No, I wouldn't be prepared to say that, because I don't know.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence in connection with the testimony of the witness the said United States Coast and Geodetic Survey chart the same to be map No. 17, together with the certificate of the Secretary of the Department of Commerce and

485 Labor of the United States Government, and tenders a copy of the said map to counsel for the State of Mississippi.

Q. Will you please look at this geological map of that section and state whether it covers in a better degree the territory south and west of Malheureux point, than the map No. 17 concerning which you testified a moment ago and which has just been offered in evidence?

A. I can say I have reason to believe this map of the Geological Survey is prepared from the Coast Survey data; it covers a more extensive area than the chart you have filed as Coast Survey chart No. 17.

Q. Counsel for the State of Mississippi was examining you a moment ago in regard to the topography of the country east of Malheureux point. Do you notice any special difference between the topography of the country east of Malheureux point and that southwest and south of Malheureux point, as far south as Grand bayou?

A. It is broken by bayous, into land surrounded by water around which a boat can navigate.

Q. Would you consider this section south and southwest of Malheureux point, or would you not consider it, as much of a character of islands as the areas that counsel for the State of Mississippi particularly specified in his cross-examination of you?

A. I think it is all an insular formation, apparently an insular formation.

Q. If you were to start at the mouth of the Mississippi river and ascend it to the Illinois canal at the northern end of the Mississippi river and go into Lake Michigan and up to Mackinac point and then down through Lake Huron into Lake Erie and around through the Canadian canal into the St. Lawrence river and down to the Atlantic ocean to the gulf of Mexico and around Florida to the mouth of the Mississippi; can you make that trip in a boat?

A. Yes, I could.

Q. Would that be a body of land surrounded by water?

A. Yes sir, I suppose it would.

Q. Would that be an island according to your definition?

A. I have not given any definition of an island.

Q. Is that the character of island that you meant when you spoke of the section of country between Malheureux point and Isle à Pitre?

A. They are much smaller bodies of land.

Q. In your opinion, as a member of the United States Coast and Geodetic Survey, which, in your work would require you to give names to various localities, would you give this stretch of country extending from Malheureux point down east to Isle à Pitre, would you give that section of the country the name of an island, or would you consider that a part of the coast line of Saint Bernard parish?

A. I would have to follow the instructions of the Coast Survey, our instructions are that we follow local usages, I would be instructed to do that.

Q. Are you at all familiar with the local usage in regard to this particular stretch of coast line?

A. The only thing that I—to be perfectly frank with you—the only thing I know about it, it is usually spoken of along the coast as the Louisiana marshes.

486 Q. Have you ever heard it called Louisiana islands?

A. I never have.

Q. How was that section denominated by the people in Mississippi with whom you spoke concerning this area?

A. I devoted considerable time at Bay St. Louis and I always heard it spoken of as the Louisiana marshes.

Q. Will you please look at the map marked map No. 17 and state whether any of these areas which were described in detail by counsel for the State of Mississippi, whether any of those forming this coast line between Malheureux point and Isle à Pitre, are called islands on the United States Coast and Geodetic chart. I refer to the bodies of land concerning which he examined you; other than Isle à Pitre?

A. There are certain outlying things here, for instance—

Q. Did he examine you about that. I ask you about what he examined you?

A. Let me look over the chart and see for myself whether any of them are called islands. None of those are called islands around where he examined me and asked me whether a boat could go, none of them are called islands on this chart, except Isle à Pitre.

Q. Will you please look at this map which is now for the purpose of identification to be marked No. 18, and state whether or not on this map any of those bodies of land other than Isle à Pitre are described as islands?

A. None of them are called islands apparently.

By Mr. TAYLOR:

Q. There are no names given to them at all, are there?

A. They have no names given to them on the geological chart No. 18. They have no names given to them on the Coast and Geodetic Survey chart No. 17.

By Mr. DYMOND:

Q. Will you please look at this map No. 18 and state whether this

area bounded on the north by the Mississippi sound and Lake Borgne, bounded on the west by Lake Borgne, bounded on the south by Grand bayou and bounded on the east by Nine Mile bayou and the lake south of it; will you state whether or not it would be under your definition, just as much of an island as these pieces of land on the coast line concerning which counsel for the State of Mississippi has examined you?

A. If you designate as an island a body of land surrounded by water around which a boat will go, it is as much an island.

Q. Is that land west of the red ink line which counsel for the State of Mississippi has caused to be placed on their map Exhibit A?

A. Yes sir.

Q. If this red ink line is taken to indicate the claim of the State of Mississippi in regard to its boundary, would I then understand you to say that there was an island west of Nine Mile bayou which Mississippi had not claimed?

A. There is a body of land surrounded by water around which a vessel may navigate west of that red line.

Q. West of Nine Mile bayou?

A. Yes sir, judging from the charts. I have not examined it personally myself.

487 Q. Judging from this chart marked Exhibit A?

A. Yes sir, the chart marked Exhibit A.

Mr. DYMOND: Counsel for the State of Louisiana now offer in evidence in connection with the testimony of the witness the geographical map of this portion of the parish of Saint Bernard, for identification, to be marked map No. 18, of which a copy will be furnished to counsel for the State of Mississippi.

By Mr. McCLURG:

Q. Please look at the map Exhibit E, filed and produced in evidence by the State of Louisiana, and tell us how far it is from the red line which indicates the deep water channel out of the mouth of Pearl river to the Mississippi shore at Point Clear?

A. I will have to measure it on the chart. About $\frac{1}{2}$ of a statute mile.

Q. Where is the first point that that deep water channel is 18 miles from the Mississippi shore to the east of Pearl river?

A. I will have to measure that. This channel line is less than 18 miles from the Mississippi coast everywhere as far east as Ship island.

Q. Do not these maps that have been shown to you and from which you have been testifying, show several islands within 18 miles of the Mississippi shore besides Isle à Pitre and these unnamed islands that we have been designating. Crooked island Mink island Raccoon island, Wild Goose island?

A. Yes sir, it does.

Q. And a great many islands within 18 miles of the Mississippi shore?

A. It shows a considerable number of what you call on the chart islands.

Q. And they are really what you have been designating as the Louisiana marshes?

A. Yes sir.

Q. There are a great many islands in that section within 18 miles of the Mississippi shore?

A. I would say a good many.

By Judge GUION:

Q. Will you please look at this map marked Exhibit E just west of Nine Mile bayou and give us the islands, if any, within nine miles north of that point?

A. You mean nine miles north?

Q. Of the point of land immediately west of Nine Mile bayou?

A. There is Petite Pass island, there is Grand island, Round island there is Grassy island and Saint Joseph island which has been washed away since the original charts were published.

Q. What is the distance from Malheureux point to lower Point Clear?

A. I measured that once; it is 6½ miles.

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Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned, by consent of counsel for the States of Louisiana and Mississippi, until April 13th, 1904, at 10:30 a. m.

Resumption of Proceedings.

APRIL 13TH, 1904—10:30 a. m.

The hearing was resumed pursuant to adjournment.

Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, att'y general for the State of Louisiana.

Mess. John Dymond, Jr., and F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. William Williams, att'y general for the State of Mississippi.

Joseph N. Flowers, Esq., assistant attorney general for the State of Mississippi.

J. B. BAYLOR, witness, recalled on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. You have before you a chart which is described as map No. 17?

A. Yes sir.

Q. And which has already been offered in evidence by the State of Louisiana. I understood — in your testimony on Saturday, to say that in your opinion there had been no radical change in the coast line from Malheureux point to Isle à Pitre?

A. To the eastern end.

Q. To the eastern end of Isle à Pitre?

A. Yes sir.

Q. Did you testify concerning the interior of what is known as the Louisiana marshes?

A. No sir, I did not. I never made any examination of it at all.

Q. Your testimony, then, as I understand it, was confined to the coast line extending from Malheureux point to the east end of Isle à Pitre?

A. Yes sir.

Q. Would you —

A. And that inference is drawn from a few well determined points along the coast line.

Q. Would you be prepared to state whether or not the interior of what is known as the Louisiana marshes, is of a harder substance or of a softer character than the coast line from Malheureux point to Isle à Pitre?

A. I would be prepared to say from my limited observations, as far back as I went, it is very much softer.

Q. Are you prepared to state that the bayous concerning which you testified, starting with Nine Mile bayou and extending east as far as Grand pass, have been widened within the last fifty years?

489 A. No sir, I am not prepared to say that. I only say this, that we have accurate surveys running back to 50 years ago, hydrographic and topographic sheets and if it is a vital matter that question can be determined, compared to what it was 50 years ago.

Q. What I am getting at now is your personal knowledge?

A. My personal knowledge is not sufficiently definite to give a definite opinion.

Q. Then you did not mean to say in your evidence given on Saturday, did you, that there had been no changes whatever in the width of the bayous leading into this country called the Louisiana marshes?

A. No sir, on the contrary I think there have been changes; the only thing I do not think those changes have been very radical, that is my opinion, from my examination that I have made in regard to certain well determined points which indicated how much the coast has washed.

Q. In what respect have these changes occurred that you have been testifying about?

A. As to the shore line?

A. Yes, and the bayous?

A. Well, on the whole, the observation went; I would say there has been some abrasion.

Q. You have said as I understood you to say just now, that positive information might be had that would show or tend to show the exact changes that have occurred in that country in the last 50 years on the coast line or shore line?

A. Yes sir.

Q. Where is this information to be had, Mr. Baylor?

A. Well, I have learned from my associate, Mr. Hodgkins, since he came here, that no complete topographical surveys of that region have been made since our original charts were published. The original charts are on file; the original hydrographic and topographic sheets are on file in our archives in Washington.

Q. Projections you mean?

A. Yes sir. And if it is desirable to know just what changes have taken place, in order to be certain what those changes are up to date, a re-survey of that whole region will be necessary.

Q. Couldn't we derive that information by having copies of these tracings?

A. All of these tracings you will have only what was the condition of that territory at the time these surveys were made; but to be certain about the condition of that territory at the present time, a re-survey of it would have to be made.

Q. Then you could not state from an examination of this chart described as map No. 17, what the changes are that have taken place?

A. The only thing that I feel justified in saying is, that at the points I have established, that at those particular points the changes have not been radical.

Q. Along what?

A. Along the shore line from Malheureux point to the eastern end of Isle à Pitre.

Q. What do you mean by a radical change?

A. Well I consider a radical change, a change of the washing away of a quarter of a mile of the coast or half a mile of the coast, a quarter of a mile I would say.

490 Q. And the depth that would accompany that washing away, what would you call a radical change in depth?

A. I would say six or seven feet, for instance, in mean low water.

Q. Now Mr. Baylor, could you state, or, are you prepared to state what changes have taken place in these bayous?

A. No sir; I am not prepared to say absolutely what changes have taken place, and I do not think anybody could say it with certainty unless a special re-survey was made of it.

Q. You don't know what the width of these various bayous was 50 years ago as compared with the present width?

A. No sir, except in a general way.

Q. Is there any way of establishing that fact by the examination of this map No. 17?

this piece of land, a craft of moderate draft, this piece of land I have named?

A. Yes sir, moderate draft.

Q. Let us go to the next piece of land, bounded on the west by Three Mile bayou and on the east by Johnson bay and the neck of water connecting it with Mississippi sound, on the north by Mississippi sound and on the south by the body of water around Nigger point; is that a body of land surrounded by water around which a craft of moderate draft can sail?

A. Yes sir.

Q. Now, let us take the next piece bounded on the east by Turkey bayou, bounded on the north by Mississippi sound, bounded on the west by Johnson bay and the bayou connecting Johnson bay with Mississippi sound; isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

A. Yes sir.

Q. Now, let us take the next piece bounded on the west by Turkey bayou on the north by Mississippi sound, on the east by Grand pass and the bayou connecting Grand pass with east Karako bay; isn't that a body of land surrounded by water around which a craft of moderate — can sail?

A. I want to look at this chart here. Yes, that is true; a craft of moderate draft can sail around that body of land.

Q. Let us take the next one, Isle à Pitre, isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

A. Yes sir.

Q. So, then, is it not true that what you have spoken of as the coast line between Nine Mile bayou on the west and Isle à Pitre on the east, is it not composed of a string of islands such as you have described, bodies of land surrounded by water around which a craft of moderate draft can sail?

480 A. You expect me to give you my honest frank opinion?

Q. Yes?

A. I think it is, but no more than a great deal of the Mississippi delta.

Q. That you see is purely argument. That may be so; they can argue you that. But I am just trying to get at the facts.

A. They are certainly bodies of land around which vessels of moderate draft can sail.

Q. If then it be true that what has been called a coast line between Nine Mile bayou and the end of Isle à Pitre is a string of islands, does not, from the standpoint of physical geography, does not the main line of Louisiana end upon the west shore of Nine Mile bayou at this point?

A. I don't see why you should say that, to be perfectly frank with you, because there are other parts in—the whole coast is broken in parts.

Q. The object of the examination is to get answers to questions

as to particular points. I am asking you a particular question, not about the coast generally but a question about the line at this particular point. You have said from this point down to Nine Mile bayou there is a string of islands.

A. I have not said there is a string of islands, out to the westward.

Q. West of Nine Mile bayou is there any other piece of land that you can call an island, between Nine Mile and the main land?

A. I have no doubt there are parts.

Q. I am not asking you about that. I ask you about a particular locality on this chart before your eyes, I want to know between Nine Mile bayou and the main land whether there is another piece of land you can call an island?

A. Here is a little part around which a vessel of moderate draft can sail.

Q. Where would you designate that island, show us the boundaries of that island?

A. Malheureux point.

Q. You say that Malheureux point divides an island?

A. There appears to be from this chart a body of land around which a boat of moderate draft can sail.

Q. Would this line indicate it, you can go through this body of water here?

A. A boat of moderate draft might.

Q. If that be true, then where would you fix the main land of Louisiana west of Malheureux point, it must end somewhere before the islands begin?

A. I think the whole coast of Louisiana in my honest opinion is permeated with bays.

Q. That is an abstract proposition you are stating. I am not arguing the question. I ask you a specific question to which I am entitled to a specific answer.

Q. I am trying to answer you to the best of my ability. I think that the whole coast of Louisiana is more or less broken.

Q. I have not asked you any such question.

A. I don't know that I can fix the main land. I don't know just where it begins or where it ends.

Q. Look upon this chart and fix the point at which this string of islands begins; if you can't fix it, why you can't?

A. I can't fix it for the simple reason that the whole coast seems to be intersected with bays.

481 Q. Why does that offer any obstacle to you?

A. Because, from your definition of an island—

Q. It is your definition not mine.

A. My definition of an island, that it is a body of land surrounded by water. There are bodies of land surrounded by water west of Nine Mile bayou.

Q. If so point them out to us?

A. I would like to have more charts, to the west. I take Malheu-

reux point and I find here this bayou which empties into the sound near my station, seems to indicate I should judge from my observation of charts that a boat of moderate draft can get through that bayou.

Q. When you look west of that, can you find any other body of land surrounded by water?

A. I have not got a chart before me covering that area sufficiently.

Q. I am talking right to the westward of this point. I am not talking about south or southeast.

A. Well, here is a small bayou, I suppose that at ordinary tide a person might get in there with a boat of very light draft and go around here and on down there.

Q. You said as I understood you, that the work of the Coast Survey, your work extends over a period of 50 years, not your individual survey but—

A. The first accurate trigonometrical survey of this coast was made somewhere about 1848.

Q. And from that time you have definite geographical data?

A. All of which are on file in our office.

Q. I understand you to say on the basis of that data, there had been no radical change in the conformation of this territory in question during that time, this coast line in question?

A. I state most positively that in the conformation of that coast in 50 years.

The witness, Mr. Baylor, is requested by counsel to run his eye from the mouth of Nine Mile bayou in a south or southwesterly direction along the red line indicated on map marked Exhibit A offered by the State of Mississippi in connection with the testimony of Mr. Dukate's cross examination, around the shores of False Mouth bay and on south and southwest along said red line until he reaches the Lake of the Mound. The witness is then requested to state whether or not as a geographer from his personal knowledge and from his knowledge as a geographer, of that section, he has any reason to believe there has been any material change in the conformation of the land along that red line during the period which has intervened from 1812 to this time?

A. If I answered that question it would be a mere conjecture, south of the shore between Malheureux point and Isle à Pitre.

Q. Please remember I am asking—

A. I just say it will be a mere opinion as I have not examined the territory for myself, except adjacent to Mississippi sound.

Q. Please remember in asking this question, I have not confined my question to your personal knowledge, but your knowledge as a geographer derived from charts and maps of this section of country and I ask you as a geographer upon that data which you have drawn, whether there has been any radical change in the general conformation of the country along that line.

A. I very much question whether there has been any radical change.

Q. Since 1812?

A. I would not say since 1812, but since our surveys were made.

Q. I will put the question, since 1812, upon the basis of your knowledge as a geographer derived from charts and maps, whether there has been, in your opinion, any radical or material change in the conformation of that country along that line since 1812?

A. I could not express an opinion on that. I would be glad to do so; but there have been such violent storms and tornadoes that I couldn't say positively.

Q. If you say that there has been no radical change in the general coast line made up of the string of islands between Nine Mile bayou and Isle à Pitre, is it not reasonable to suppose that less change would have taken place in this interior along this red line which I have indicated, owing to the fact it is in a much more sheltered position from storms?

A. I presume so, I presume it is, to be perfectly frank with you.

By Judge GUION:

Q. That would be a mere presumption?

A. Yes sir.

By Mr. TAYLOR:

Q. But giving your scientific opinion as a geographer, wouldn't you say that?

A. Judging from what has taken place where I have made actual measurements, I am prepared to state positively that as a matter of fact, there has been no radical change.

By Mr. McCLURG:

Q. I wish you would give us, Mr. Baylor, a statement with reference to this deep water line on your chart No. 17, whether that channel has been marked by bouys by the Government?

A. Yes sir, it is bouyed out.

Q. And that was for commercial purposes?

A. For the use of navigators.

Q. There is nothing on any of these charts to indicate to you that that deep water channel was ever marked as a dividing line between these two States?

A. There is nothing to indicate that at all. I am prepared to say positively there has been no radical change on the coast line fronting Mississippi sound. Down here I have made no examination. This chart map No. 17 is compiled from a series of original topographical and hydrographic sheets upon a much larger scale, which were taken on the ground, and certified copies of these hydrographic and topographical sheets can be obtained from the Coast and Geodetic Survey.

Q. Are you personally familiar with Nine Mile bayou?

A. I have been in the mouth of it and established a signal near the mouth of it.

Q. Are you acquainted with False Mouth bay?

A. Only as seen from the top of my signal towers which are built on the edge of the shore line between Malheureux point and Isle à Pitre.

Q. How deep is the water along this red line through Nine Mile bayou?

A. I can tell if you permit me to examine the Coast Survey chart.

Q. Mr. Baylor what is the most southern point to which you have gone over this territory you see, how far south have you been along the territory traversed by that red line?

A. Only a few hundred yards in the mouth of the bayous.

Q. Which bayous?

A. Nine Mile bayou, Three Mile bayou, Johnson bayou, Turkey bayou, Creole gap, Elephant bayou. Now, I would like to furnish from memory, Drum bayou, Grand pass, Bayou Pierre, I have been in the mouths of all those bayous along there and skirted along the coast.

Q. Please now look at map No. 17 and tell us what you mean by the Louisiana coast line in your estimate from the deep water channel side?

A. It is the coast line between Malheureux point and the eastern end of Isle à Pitre.

Q. Do you claim the coast of Isle à Pitre as the Louisiana shore line?

A. I have not made any such claim, I simply answered the questions that were given to me.

498 Q. You testified a moment ago that these islands, Grassy island, Grand island, Round island, and Isle Petite Bois, are within nine miles of the Louisiana coast?

A. The Louisiana coast as defined by the attorney general of Louisiana in questioning me.

Q. These same islands are also within 18 miles of the Mississippi main land, are they not?

A. Yes sir.

By Mr. DYMOND:

Q. You were testifying a few moments ago in regard to this Exhibit A offered by Mississippi, and you were interrogated as to whether you measured from designated points in a southerly direction. What means did you have to guide you in determining what was a southerly direction, in making your measurements on this map?

A. I only used my eye and the directions as given on the chart showing the north, east, west and the south.

Q. Is there on this map Exhibit A offered by Mississippi a series of arrows which show the north, south, east and west directions?

A. There is one arrow, I don't see a series.

Q. Well, an arrow, there is an arrow?

A. Yes sir.

Q. Did you follow the direction of that arrow in determining your north and south line, as near as your eye would permit you to do so?

A. Yes sir.

By Mr. FLOWERS:

Q. In making this measurement you measured a line as nearly parallel with the north and south arrow as you could by comparison?

A. Yes sir.

Q. Simply by looking at it?

A. Yes sir.

WILLIAM CANDLER HODGKINS, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. My home is in Boston, Massachusetts, but my usual place of residence is in Washington.

Q. How old a man are you?

A. I am 49 years old.

Q. What official position, if any, do you now occupy in connection with the United States Government?

499 A. I am an assistant to the Superintendent of the Coast and Geodetic Survey, a bureau of the Department of Commerce and Labor.

Q. How long have you been connected with that bureau?

A. Since July 1871.

Q. What was your profession before you became connected with the United States Coast and Geodetic Survey?

A. I never practised my profession outside of the Coast and Geodetic Survey. I am a civil engineer by education and a geodetist by profession.

Q. Are you a graduate of any institution of learning?

A. I am a graduate of the Lawrence scientific school of Harvard university.

Q. When did you graduate there?

A. In 1877.

Q. Did you carry on your studies there after you became connected with the United States Coast and Geodetic Survey?

A. Yes sir, I served in the Coast and Geodetic Survey from 1871 to 1873, previous to attending the scientific school, and then I took leave of absence for a sufficient period to pursue my studies at the scientific school maintaining my connection with the Coast and Geodetic Survey throughout that period in working through summer vacations for that corps.

Q. Has your service with the United States Coast and Geodetic Survey since 1871 other than you have designated been a continuous service?

A. Yes sir.

Q. Have you ever been connected as a member of the United States Coast and Geodetic Survey, with any boundary disputes between any of the States of the United States of America or foreign powers?

A. Yes sir; I have had quite a considerable experience in boundary matters, in boundary adjustments, at any rate, rather than disputes perhaps.

Q. Will you please state chronologically, what experience you have had in that connection, as well as you can now remember it?

A. So far as I recollect, my first experience in boundary matters was in 1892 when I was detailed to make a re-survey of the boundary between Pennsylvania and Delaware, commonly known as the circular boundary, which had been surveyed in 1701 for William Penn.

Q. How did you happen to become connected with that particular boundary location?

A. I was detailed for that by the superintendent of our survey by the request of the commissioners for Pennsylvania and Delaware, that is to say, I should qualify that by saying, the commissioners did not specifically request my detail, they requested a detail of a suitable man for that purpose.

Q. Who were these commissioners?

A. Well, I really cannot give the names of all of them with accuracy, but the chairman on each side would be sufficient I presume; on the side of Pennsylvania the chairman was the Hon. Wayne McVeagh and on the side of Delaware the chairman was the Hon. Thomas F. Bayard.

Q. Who were these commissioners, respectively, appointed by?

A. By the legislatures and governors of their respective States, I say the legislatures and governors; although the governors made the appointment I think they were not absolutely free handed in the matter, I believe that the legislatures of the respective States resolved that the speakers of the houses of the legislatures of the respective States should be members of the commissions; in addition to them the chairman of the commissions were appointed by the governors.

Mr. WILLIAMS: We except to all this testimony as to the witness being detailed to make a survey on some other matter and as to the

members of the commission and by whom they were appointed, as being entirely irrelevant.

Q. Was there at that time, a boundary dispute pending between the two States concerning which you have testified?

A. I don't know that it would be properly called a dispute. There was an uncertainty as to the location of the boundary and there was an amicable agreement to have the boundary line run by a suitable person under the direction of the commissioners.

Q. Did you run that boundary line?

A. Yes sir.

Q. Was it adopted by the commissioners?

A. Yes sir.

Mr. WILLIAMS: The State of Mississippi desires it understood that it takes the same exception to all questions of a similar character.

Q. What was the next boundary matter between States, with which you were connected?

A. Before I answer that question, will you pardon me in saying that I had another boundary matter that was not between States, that came next in chronological order?

Q. Yes?

Q. I say that because in the very next year, in 1893, I was attached to the corps which was engaged in surveying the southern part of Alaska in reference to the international boundary.

Q. Was that in reference to the controversy between the United States and Great Britain?

A. Yes sir.

Q. Will you please state what you did in that connection?

A. I accompanied one of the Canadian parties in order to observe the operations under an agreement between the two governments that there should be a joint survey.

Q. Was that data used in the final arbitration of this matter which recently took place in England?

A. Yes sir.

Q. And as I understand, you were a party on that expedition?

A. I was the American representative, the representative of the United States in one of the British parties.

Q. By whom had you been appointed in that instance?

A. By the Superintendent of the Coast and Geodetic Survey.

Q. Under whose instructions did the Superintendent of the Coast and Geodetic Survey appoint you, if you know it?

A. The superintendent is not under anybody's instructions in regard to giving instructions to his subordinates. His instructions to his subordinates are merely as to the general character of the work to be done and in that he acts freely.

Q. From whom had he received the request that an assistant should be designated?

A. This was an extensive survey including something like 12 or

15 officers on each side, and certainly on the American side, and the whole thing was under the general superintendence of the Department of State; but the Superintendent of the Coast and Geodetic Survey was in active charge of the work and all matters of

501 detail were at his discretion.

Q. Is the Secretary of State the official head of—

A. No sir; he has charge of all international matters of that sort, and for the time being our force practically worked for the Department of State.

Q. What was the next boundary matter in chronological order, with which you were identified?

A. In 1895 I was detailed as the chief engineer to re-survey a portion of the boundary between the States of Missouri and Iowa.

Q. By whom were you appointed in that instance?

A. I was appointed by the Superintendent of the Coast and Geodetic Survey, for the time being, at the request of the commissioners appointed by the Supreme Court of the United States to adjudicate the matter.

Q. Was that, then, a boundary matter pending in the Supreme Court of the United States between the two States you have just designated?

A. Yes sir.

Q. Did you make the particular survey?

A. I made the survey and established the monuments.

Q. Was that reported by you to the Supreme Court?

A. Not by me; it was reported by the commissioners.

Q. Was that report approved by the Supreme Court of the United States?

A. So I understand.

Q. What was the next instance in chronological order where you had occasion to establish boundaries?

A. This is rather a minor matter and I do not know that it should be mentioned except for the completeness of my connection with boundary matters. In 1896, if my memory serves me, I was sent to South Carolina to inspect a local survey between two counties. The only reason I mention this boundary survey is as I say for completeness. The county commissioners of Spartanburg and Greenville counties, South Carolina, requested that an inspector be sent down there to look over some work that had been done by the local engineers, and I was sent there. I merely mention that for the sake of completing the matter of my connection with boundary matters.

Q. Did you have anything to do in determining the boundary in that particular instance?

A. No sir; I simply revised or reviewed the work that had been done, and I made certain recommendations.

Q. Were those recommendations of yours adopted?

A. I don't know about that. That was a matter which rested with the supreme court of South Carolina finally; I never heard how they decided the matter.

Q. What was the next instance in chronological order where you had occasion to be connected with any boundary matter?

A. I think it was in the following year, if I am correct, I think in 1897 that I was designated as the engineer on the part of the State of Maryland, in a controversy, or uncertainty would be better, which had arisen as to the boundary between the States of Maryland and Virginia in their water boundary running through the Tangier and Pocomoke sounds, which are branches of Chesapeake bay.

Q. What had caused the dispute to originate between those States; what interest, if any?

A. That was a matter something like this case, of an oyster dispute, that is, the oyster question was mixed up with it; the boundary had been established by a commission some years before, but never marked, it had been established theoretically but not practically, and my friend Mr. Baylor represented Virginia his native State and at the request of the Maryland authorities that an officer be designated to represent Maryland I was selected for that purpose.

Q. Were you selected by the Superintendent of the Coast and Geodetic Survey in that instance?

A. Yes sir, that was my understanding, I received my instructions from him.

Q. Did you proceed to define and settle that line?

A. Yes sir, we settled the line, and marked it by temporary marks which I believe were never replaced by permanent ones.

Q. Were the boundary lines run by yourself and Mr. Baylor satisfactory to the States in interest?

A. They appeared to be entirely so.

Q. What was the next instance wherein you had occasion to consider boundary matters?

A. In 1900 I was called upon, at the same time, to take up two separate surveys, in the spring of 1900, April 30th I think, at any rate, about the end of April 1900, the Supreme Court of the United States appointed me a member of the commission to ascertain, locate and remark the boundary between the States of Virginia and Tennessee and in the same year I was also designated as the engineer in charge of the work of re-surveying the Mason and Dixon line as it is commonly called, otherwise the boundary between Pennsylvania and Maryland.

Q. Before we come to the latter instance, you can refer to the first instance. Do I understand, in the case between Virginia and Tennessee that you were appointed by the Supreme Court of the United States?

A. Yes sir.

Q. Were certain instructions given to you by that court?

A. Yes sir; instructions were given to us which appear in the decree; we were instructed to find the old line and to remark it, but without authority to mark any other.

A. Yes sir.

Q. Does that same channel extend to the Rigolets?

A. Yes sir.

By Mr. DYMOND:

Q. Will you please look at this map marked Exhibit E and state whether the red ink line thereon, represents that same deep water channel extending to the mouth of the Rigolets?

A. It apparently does.

By Judge GUION:

Q. Will you please examine this document that I hold in my hand marked Exhibit A which was offered in evidence by the State of Mississippi in connection with the deposition of Mr. W. K. M. Dukate, and follow that red line extending south from Pearl river, then follow the same line down to the furthest western point south, and then across from that point going east and state whether there is any channel, deep water channel or otherwise, following that line?

A. There is certainly not from this chart. There is no deep water channel in that section according to my knowledge of the territory.

Q. Examine that map and state whether the red line that I have just asked you to examine, does not, in a number of instances cross over bodies of land?

A. Bodies of marsh, marsh land.

Q. Can you, by examining this map and the scale on the map, state how far this southern red line is from the Mississippi coast or shore?

A. The nearest point to the Mississippi coast you say?

Q. Yes, and then the furthest. You might take, Mr. Baylor, from the extreme eastern mouth of Pearl river due south to the southwestern point of this southern red line on this map marked Exhibit A of Mississippi?

A. About 18 miles, a little under 18 miles.

Q. Now, does this red line extending from that point as far east as the extreme southeastern corner of Isle à Pitre extend 18 miles from the Mississippi shore?

A. The nearest point of the Mississippi shore?

Q. What I want to know is, whether that whole line extending from the southwestern corner to the eastern extremity of the red line due south of the southeastern part of Isle à Pitre, whether that line extends 18 miles from the Mississippi shore the whole distance?

A. The nearest point of the Mississippi shore. I have measured that distance; about 25 miles.

Q. Is there any other point on this map marked Exhibit A of Mississippi—

A. I am not accustomed to this scale, it is different from my scale, I would like to make a correction.

493 Q. You have a perfect right to correct your testimony and state your reason for doing so?

A. I correct my testimony for the simple reason that I am not ac-

customed to the scale of this map and I took the wrong scale in making my measurements.

Q. Please make the corrections in your testimony.

A. It is about 21 miles there where I said 18 before.

Q. In other words do I understand you to say that map Exhibit A of Mississippi, shows a distance of about 21 miles from the eastern entrance of Pearl river into Lake Borgne down to the extreme southwestern point of the red line extending across eastward?

A. Yes sir, according to the scale of the map on which I make the measurement.

Q. Then the map Exhibit A offered by Mississippi does not show an 18 mile line from the Mississippi shore south in the Louisiana marshes, does it?

A. Not according to this scale; whether this is statute or nautical miles I don't know, it is not stated.

Q. What were you estimating?

A. It is not indicated on the map as far as I can see, whether the scale is statute miles or nautical miles.

Q. You were following the scale on this map?

A. Yes, sir on this map that is before me.

Q. Now, Mr. Baylor, start at the point marked Gulf view as shown on this map marked Exhibit A offered by Mississippi, and go due south to the red line marked on this map, and give us the distance between Gulfview and the point due south on that red line?

A. About 23 $\frac{1}{2}$ miles.

Q. Now, Mr. Baylor, take the point marked on this map Exhibit A offered by Mississippi where it is marked Waveland, and go due south to the red line that extends westward and eastward and give us the distance on this map according to the scale on this map?

A. About 26 $\frac{1}{2}$ miles.

Q. Now, take the point marked on this map A offered by Mississippi designated as Pass Christian and go due south to the red line marked on this map, and give us the distance?

A. About 27 $\frac{1}{2}$ miles.

Q. Mr. Baylor, taking the scale on this map Exhibit A offered by Mississippi, as you find it on the map, and examining this map closely, will you please state whether there is any point where the Mississippi coast or shore line as given on this map is not over 18 miles from the red line on this map extending from the southwestern part going eastward?

A. I would say that is the nearest place.

Q. You select the nearest place and state the direction in which you measure?

A. Approximately northwest according to this map. A little over 20 $\frac{1}{2}$ miles.

Q. Then do I understand you to say that the nearest point from the Mississippi shore line marked on this map Exhibit A offered by Mississippi to the red line south, is 20 $\frac{1}{2}$ miles?

A. Yes sir. That is, according to my measurement, the measurement from the scale on the map before me.

Q. Please name the points on this map that you have just measured from, as being the nearest points, and mark them in some way to designate these points, in ink?

494 A. I would like to have the opportunity of making that measurement over again.

Q. Certainly?

A. So as to be certain where I started from. About $20\frac{1}{2}$ miles.

Q. Now, mark the points you have just measured from where you say the distance—

A. How shall I mark them?

Q. Mark them A-A?

A. All right (witness marks A-A with a cross).

Q. Is there any point on this map marked No. 17 upon which you have marked the letters C-C where the deep water channel is more than nine miles north of the shore line extending from Malheureux point to Isle à Pitre along what is known as the Louisiana marshes?

A. More than nine miles statute miles shall I say?

Q. Give them both?

A. Both are given on the chart. Scales for both are given on the chart. You want to know how far this channel—

Q. I have asked you whether at any point this deep water channel extends more than three leagues or nine miles whether statute or nautical miles, north of any part of the Louisiana marshes coast line extending from Malheureux point to Isle à Pitre?

A. I first gave it in statute miles.

Q. I mean in a north and south direction?

A. $8\frac{1}{2}$ statute miles is approximately the maximum distance measured approximately in a north and south direction. Now do you want nautical miles?

Q. Yes?

A. About $7\frac{1}{2}$ nautical miles.

By Mr. WILLIAMS:

Q. Did you make both of those measurements from and to the same point?

A. Yes sir.

By Judge GUION:

Q. Mr. Baylor, examining this map No. 17 or this chart marked map No. 17, can you state that the deep water channel concerning which you have testified and which you have marked C-C is not, at any point, north of the Louisiana coast line from Malheureux point to Isle à Pitre, more than nine miles from that shore line?

A. It is not more than nine miles north, I just proved it is a little under nine miles.

Q. I am just repeating the question.

A. From my measurements it is within nine miles.

By Mr. DYMOND:

Q. Does it at other points approach any closer to the Louisiana shore line?

A. Yes sir.

495 Q. Did you take the maximum distance when you made your measurements?

A. I took the maximum distance from the shore line between Malheureux point and Isle à Pitre, the end of Isle à Pitre.

Q. Now Mr. Baylor, please examine this map again marked No. 17 and state whether there are marked on this map any bodies of land called on the map, islands, south of the deep water channel marked C-C?

A. Yes sir; there are.

Q. Name them? According to the names given on this chart or map marked No. 17?

A. You mean all embraced on this chart?

Q. North of the shore line extending from Malheureux point to the eastern extremity of Isle à Pitre?

A. Yes sir, there is Petit Bois island, there is Round island, there is Grand island, there is Grassy island, there are no other islands that I can see; Saint Joseph island you know is all washed away.

Q. Saint Joseph island is north?

A. North of it yes, I beg pardon, of the deep water channel, you are right on that.

Q. Then, do I understand you to say that the islands that you have just named and which are marked on this map No. 17 and described as islands, are within three leagues or nine miles of the coast line extending from Malheureux point to Isle à Pitre?

A. Nine statute or nine nautical miles.

Q. Both?

A. To be certain of it I would like to measure it. They are all within nine statute or nine nautical miles either, of that coast line between Malheureux point and the eastern end of Isle à Pitre.

Cross-examination.

By Mr. WILLIAMS:

Q. The information that you gave in the beginning of your testimony this morning, was based upon what?

A. In regard to the location of those points and how much washing away?

Q. Yes?

A. From actual observations I made during last spring, actual field observations I made during last spring.

Q. The spring of what year?

A. The spring of 1903.

Q. Were you all over this territory about which you have been interrogated and about which you have testified, personally yourself?

A. Yes sir, I built a lot of beacons which are still standing there.

Q. Is it not a fact that most of your information about measurements and washings and what I mean by washings is, the territory that has gone away, is based upon information furnished you and upon information that you derived from books, charts and maps?

A. It was furnished in this way. From 1848 to 1855 a number of points were determined accurately by trigonometrical methods and marked along that coast line. I had great difficulty in finding

those points, so much so, there was so much uncertainty about it, to be certain that my work was based upon a solid basis, on all this coast survey, I had to go way back to the Biloxi lighthouse and Ship Island lighthouse in order to be certain of my geographical — and projected that base line, which is well known, from Ship Island to Biloxi lighthouses, by a system of trigonometrical methods and established a lot of points along this shore line; those points fell upon certain portions close to the shore line, and I determined from those points that the coast had not washed materially at those given points since the original points were established along in 1850 and '53.

Q. That is, taking those maps and charts made in——

A. Yes sir, and the distances are known absolutely.

Q. As marked on those maps?

A. Yes sir. They were known absolutely, I say absolutely they were known within the fraction of an inch in ten miles.

Q. Did you make any of those measurements yourself personally?

A. Yes sir, I made them all myself personally. I went over the ground myself and made the computations and those computations have been revised in Washington and those positions have been plotted on this chart.

By Judge GUION :

Q. Which chart do you refer to?

A. Map No. 17.

By Mr. FLOWERS :

Q. Mr. Baylor, now, in estimating—(witness being shown map Exhibit A offered in evidence to the deposition of W. M. K. Duke on his cross-examination offered by Mississippi) in making your measurements on this map Exhibit A a few moments ago from points on this red line which is claimed by Mississippi to be her southern boundary, to the Mississippi coast, did you pretend to say that your measurements between the points, were directly north and south of each other?

A. No sir, I did not say directly; I only did it as closely as I could with my eye.

Q. You can't say that your measurements are accurate?

A. I think they are accurate within certain limits, I do not think they are absolutely accurate, they are sufficiently accurate to show the general facts.

Q. One of your estimates was as to the distance between the most eastern mouth of Pearl river and the most southwestern point of what is claimed by Mississippi as her territory. I will ask you what direction that most eastern mouth of Pearl river is from this southwestern corner from which you measured?

A. According to this map I should judge from my eye it is a little west of north.

Q. You also stated that this red line drawn along the territory claimed by Mississippi on the western side of it, you say that this line in certain places crosses over the Louisiana main land?

A. No, I said between here and the end over here.

Q. When you say here, just designate?

A. Between the mouth of Pearl river and the end of the line where it leaves the chart, on the extreme east, it crosses right over the marsh land.

497 Q. Will you please designate at what points this red line crosses over the Louisiana marsh lands?

A. It crosses over the marsh lands north and adjacent to what is marked on this map as Lake of the Mound. It crosses over the marsh land between what is called Southwest pass and Treasure bay. It crosses over the marsh land between Fox bay and Southwest pass, and also over a bayou; those are the principal points.

Q. Are you personally familiar with the territory crossed by this line from the most southwestern point of what is claimed by Mississippi as her territory eastward?

A. No sir, I am not, I only make that statement from the map that is before me.

Q. When you say that this line crosses marsh lands, you base your answer—

A. Upon the map that is before me.

Q. On the map that is before you?

A. I do.

Q. You don't know of your own knowledge that any part of this land here, as shown by this map crossed by that red line, is marsh land?

A. I do not.

Q. Will you please state whether of your own knowledge, this red line marked on this map from this most southwestern corner of what is claimed by Mississippi as her territory northward to the mouth of Pearl river, crosses any land?

A. I only know from the map itself, it does not seem to cross any land.

Q. You don't know of your own knowledge?

A. No sir.

A. This map No. 17, as far as a re-survey of these bayous is concerned, is not up to date. It is only information that was in hand at the time the map was published; and as far as I understand it, the present width of those bayous is not known definitely at our office.

Q. Is there any way by an examination of this map, to determine what the difference is, if any, between the width of these various bayous 50 years previous and at the time this map No. 17 was made?

A. Map 17 only contains the data that was in the possession of the Coast Survey at the time it was published. It don't pretend to be a perfect representation of present conditions.

Q. And you say the only way by which to determine what the present conditions are—

A. Compared to what they were 50 years ago is to order a re-survey of that region and to make a careful comparison between the hydrographical and topographical conditions compared with what they were when the original projection sheets were prepared.

By Mr. DYMOND:

Q. You have stated that there was a tendency to change on the coast line and a tendency to change in the bayous. You have stated that so far as the coast line was concerned there had not, in your opinion, been any radical change stating you would consider a radical change was a washing away of a quarter of a mile. Now, what, if any, has been the tendency of change in the bayous.

A. Well, I should say, as a general proposition I should say that it had been to enlarge the bayous.

By Mr. ZACHARIE:

Q. Would any of these old charts, say along in the '50's, serve to establish what was then the shore line of this north coast of this disputed territory?

A. Yes sir; those old charts show the shore line.

Q. Then, by comparison with this most recent chart map No. 17, ought that comparison not show what changes, if any, have taken place?

491 A. As I said before, I tried to make it plain, I say that this chart before me does not show clearly the present conditions, for the simple reason that at the time the chart was published we had no complete survey of that region up to that date.

Q. Would such comparison approximately show, without the necessity of a re-survey?

A. I suppose it might approximately, but it would be largely a matter of conjecture.

By Mr. DYMOND:

Q. But, Mr. Baylor, if you were to take the old map or old projections and calculate the distances from the beacons on the Mississippi coast south—

A. Triangulation points, we call them.

Q. Yes—south to the triangulation points as originally established on the Louisiana coast, and were to take the distances today between the points that you have recently established, would you not be able to show, in the locality where you have established these points, the approximate difference of the washing away?

A. Yes sir. I have taken the liberty to telegraph my superintendent since I had the honor to testify here on Saturday, to send to counsel of both States, plotted upon this map No. 17, the exact position of all of those old triangulation points, all that have been established since the first surveys were made.

Q. As I understand you, the distance between, for instance, your Bayou triangulation point to the point on the Mississippi coast—

A. Yes sir.

Q. — is worked out according to the scale of this map in accurate proportion?

A. It is worked out in absolute distance, so many meters and fractions of a meter, so a many yards and fractions of a yard.

Q. For instance if you will take this bayou triangulation point from what point on the Mississippi shore did you go, what distance, in relation to that point?

A. I said on Saturday I went back to the center of the old lighthouse at Biloxi which was built I think somewhere about 1848, and to the old lighthouse on Ship island, and used as a base line, what we call a base line, the same data that had been used in the original surveys, and if it becomes a vital question, every one of those old triangulation points can be established I should say probably within $39 \frac{7}{100}$ of an inch.

Q. And you have requested the Superintendent of the Coast and Geodetic Survey to furnish to counsel for both States this data?

A. Yes sir.

Q. Now, Mr. Baylor, you indicated by pencil marks on Saturday the deep water channel on map No. 17. Would you please—

A. No; I think you are mistaken. I showed where the coast surveys marked the course for vessels to follow.

Q. Would you please mark that in ink in place of lead pencil?

A. I remember now. I beg your pardon. I made that line. I marked it as the course laid down on the Coast Survey chart for vessels to follow in going to Pearl river.

Q. Now, we want you to mark it with ink?

A. I have marked it with ink C-C.

Q. Will you put another C about in the center of that line?

A. Yes sir.

492 By Judge GUION:

Q. I understood you to say in your testimony on Saturday, after examining this map No. 17 that the line marked by you as C-C, is the deep water channel leading from the eastern mouth of Pearl river to the gulf of Mexico. Am I correct?

the General Land Office in regard to the plats and surveys made by their employees.

Q. Did you look into the question of the transfers of lands by the State under the swamp land acts of 1849 and 1850 and their approval by the General Land Office Department of the United States?

A. I was informed by the officials at the Land Office that such transfers had been made.

508 Q. Will you please look at this document which is now for the purpose of identification marked Document No. 11, and state whether you recognize it to be a certified copy of the report made by you to Mr. O. H. Tittman, Superintendent of the Coast and Geodetic Survey on the request of Mr. F. A. McLain member of Congress from the State of Mississippi?

A. Yes sir; I recognize it as a certified copy.

Q. What we want to know is whether you are able to state that the document that you now hold in your hand and marked Document No. 11, is a correct copy, not only certified but a correct copy of the report that you made to Mr. Tittman at the instance of Mr. McLain member of Congress from the State of Mississippi.

A. This is certified to by Mr. Cortelyou Secretary of the Department of Commerce and Labor. I will have to compare letter by letter.

Counsel suggests that the commissioner assist the witness in collating the original with the copy which is done.

Q. We want you to be able to state whether it is a correct copy. Now, have you before you the original report which you made to the superintendent on the subject matter embodied in the request of Mr. F. A. McLain?

A. Yes sir.

Q. Have you compared that report verbatim with the certified copy of it which is marked Document No. 11?

A. Yes sir.

Q. How does this certified copy compare with the original report made by you?

A. I find there are three, I think slight clerical errors in the transcription.

Q. Have those corrections been made in the copy?

A. So I understand.

Q. Are those errors important?

A. They do not seem so to me.

Q. Otherwise is this certified copy a correct copy of the report which you made to the superintendent at the request of Mr. McLain?

A. It is.

Q. Will you please look at these blue prints which accompanied your report and state whether they are true and correct and faithful blue prints of the original drawings which accompanied your report?

A. Yes sir; I recognize those as authentic copies.

Q. Now, have you noticed the list of maps which is attached to your report and examined the same?

A. Yes sir.

Q. Does this list correctly represent the maps which you examined prior to your final report?

A. It represents those that I thought worth citing.

Q. Did you examine other maps in addition to those you have mentioned?

A. Yes sir.

Q. Is this list which accompanies the copy of your report, a correct copy of the list which accompanied your original report?

A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, a certified copy of the said original report made by W. C. Hodgkins assistant U. S. Coast and Geodetic Survey, at the request of F. A. McLain member of Congress from the State of Mississippi, together with a copy of the list of maps and blue prints of the original drawings, all attached under the certificate of George B. Cortelyou Secretary of Commerce and Labor, together with said certificate all to be marked Document No. 11.

Mr. WILLIAMS: Counsel for the State of Mississippi objects to the introduction of this report made by this witness with the certificate attached and the charts, on the ground that it is simply the opinion of the witness heretofore given, the witness himself being now on the stand, the author of this report; and because it is hearsay; and because this witness had no authority to speak for the State of Mississippi; and because it is irrelevant and incompetent.

Q. Will you please look at the next to the last line on page 5 of your report and state whether the punctuation consisting of a comma coming after the word islands, is the correct punctuation or whether there should be a semi-colon there?

A. The question as I understand it, is as to a comma after Petite Pass islands?

Q. Yes.

A. In this original it has a comma after Petite Pass islands?

Q. Yes?

A. Between islands and Saint Joseph?

Q. Should there be a comma or a semi-colon there?

A. It is a comma here. Is that the question you wish to ask me?

Q. No. When you prepared that report did you intend to put a comma or a semi-colon there?

A. You must remember that was three years ago; I can hardly go back and say what my intention then was.

Q. It is a little obscure as it stands there as to which island or islands in the lower part of that paragraph it is intended to refer to?

A. I don't see the obscurity myself but if you want my interpretation of the sentence, it is that it means that there are four of these islands; namely, those named immediately afterwards, Grassy, Grand Round and Petite Pass islands; now that covers that. Then comes another phrase, Saint Joseph's island east of Point Clear Mississippi being considered as not one of this group. It is a mere question of judgment in regard to punctuating, some people might put a semi-colon there, but according to the report I put a comma there.

Q. The meaning of that is, that these four islands are included in Louisiana—

A. No; the meaning—

Q. The fifth, Saint Joseph's island is not included?

A. The meaning is, that these four islands are included under the term Malheureux islands.

MR. WILLIAMS: Counsel for the State of Mississippi objects to any explanation on the part of this witness for the reason that the record stands for itself.

510 By Mr. DYMOND:

Q. Considering the experience that you have had in boundary matters, with your knowledge and information, as an expert, what prompted you to suggest that the proper boundary line between Louisiana and Mississippi was the deep water channel running out of the mouth of Pearl river north of Half Moon island eastward through Mississippi sound to the deep water channel separating Cat island from Isle à Pitre?

A. Well, Mr. Dymond, I think I ought to say, in the first place that I don't think I said just that, I don't think I said it was the proper boundary because it is not my business to determine what is the boundary. But I think I said that I thought it would probably be found to be the proper boundary.

Q. I will now quote from your report. "From all the information at hand, therefore, it would appear that the boundary between the States probably takes the course indicated on the final tracing, that is, north of the Malheureux islands, and thence through the Cat Island channel to the gulf of Mexico." Is that line thus named by you, the deep water channel running from the mouth of Pearl river north of Half Moon island eastward through Mississippi sound to the channel between Cat island and Isle à Pitre?

MR. FLOWERS: We object to this question because it simply calls for the opinion of the witness on a matter about which he has not qualified as an expert to testify.

A. It is the deep water sailing line; it is called that; that is, the channel ordinarily used and navigated.

Q. What prompted you to suggest that that would be the probable boundary line between the two States?

Mr. FLOWERS: Counsel for the State of Mississippi make the same objection.

A. I concluded, as noted in my report heretofore introduced in evidence, that the islands called Malheureux probably were part of Louisiana; it naturally followed that the boundary line must run between those islands and Point Clear, assuming that premise. I also noted in my report that I concluded that Cat island was probably a part of Mississippi; that the boundary line, therefore, passed to the westward of that according to the generally understood principles covering water boundaries between neighboring sovereignties the line passing through such water area ought to follow mid channel and it was on that supposition that the hypothetical line laid down by me was constructed.

Q. Has the rule which you have just enunciated in regard to the deep water channel between sovereign States been followed in the different boundary cases where that question has come up or between governments where the question has come up?

Mr. FLOWERS: Counsel for the State of Mississippi make the same objection as heretofore noted.

A. In reply I would say, that so far as I know, it is the universally applied rule of interpretation. The question has arisen in a number of international disputes.

Q. Has the rule been held to be what you have just enunciated?

A. That is my understanding of it.

511 Mr. FLOWERS: Counsel for the State of Mississippi make the same objection to the question and answer.

Q. Did any question of this rule come up in the connection with the oyster boundary case in Chesapeake bay?

A. Not affecting the main point of the controversy. There was a small portion in Pocomoke sound and river that was based on that rule, but most of the boundary line traversed the sounds, cut across them, so it didn't come in there.

Q. Where the rule would apply in that portion of Pocomoke sound was it applied in establishing the boundary as to that portion?

A. It is my recollection that it was.

Mr. FLOWERS: It is understood that the objection made by counsel for the State of Mississippi, heretofore, shall apply to all similar questions and answers, as to this witness's experience as to the application of deep water channel rule which he says obtains in controversies of this kind.

Q. As a member of the Coast and Geodetic Survey, are you familiar with the general topography of the section of the country in dispute between Louisiana and Mississippi in this case, as based upon the data and records of the Coast and Geodetic Survey?

A. My information is derived altogether from the maps and charts of the Coast and Geodetic Survey.

Q. Have you any knowledge of the existence of any other deep water channel extending from mouth of Pearl river to the gulf of Mexico, than the one which you have indicated on the blue print accompanying your report marked Document No. 11?

A. It would depend a good deal, in answering that question, on just what is meant. Of course one can draw different lines here, it would be possible to draw other lines which might be called deep water channels varying in some respects from the one I drew; the one I drew is what is called the deep water sailing line.

Q. Would there be any material variance in that channel line between the mouth of Pearl river and the channel between Cat island and Isle à Pitre?

A. There would not be any material variation assuming as I have in all my writing on the subject, that the Malheureux islands are part of Louisiana. Of course if that were open to controversy you might draw a line further south.

Q. In all of your investigations and on all of the maps which you have ever seen of this section of the country now in dispute, between Louisiana and Mississippi, have you ever seen any map that gave to Mississippi that section of the country south of the shore line extending from Petite pass or Malheureux point to Isle à Pitre?

A. No sir.

Q. To what State was this section of the country shown to belong by the various maps which you have examined?

A. Some of them did not give any indication but where there was definite indication they usually showed it as part of Louisiana.

Q. Concerning what portion of the territory, if any, has there been any uncertainty or variance in the maps which you have examined?

512 A. I think that is pretty fully explained in my report, that the main uncertainties have been in regard to the jurisdiction over Cat island and Malheureux islands.

Q. What islands represent the Malheureux islands?

A. According to my understanding, Grand, Grassy, Round and Petite Pass islands.

Q. Is Saint Joseph island included in that group?

A. Not to my understanding; of course it may be interpreted to be, but I never understood it so.

Q. Is Saint Joseph island north of that deep water channel, deep water sailing line?

A. Yes, sir; but it has disappeared from our recent maps; it has been washed away.

Q. Are these islands which you have described as being the Malheureux islands, south of that deep water sailing line?

A. Yes sir.

Q. Have you ever seen in your investigations of the various maps

is section of the country, any map which gave Isle à Pitre to Mississippi?

Not to my recollection.

To what State was Isle à Pitre given by the various maps which you have examined?

To Louisiana, so far as shown at all; there are some general maps that do not represent the jurisdiction at all.

Do you know of any deep water channel extending south of the State of Mississippi and thence extending in an easterly direction?

A. I know of no deep water channel in the whole area included in that section.

Mr. FLOWERS: Counsel for the State of Mississippi object to all the testimony of this witness as to what the several maps he has examined show, because the maps speak for themselves.

At this stage of the proceedings, the hearing was adjourned by the commissioner for recess, until 2:30 p. m. the hearing to be resumed at the same place and date at 2:30 p. m.

Resumption of Proceedings.

2:30 P. M.

Pursuant to adjournment for recess the hearing was resumed at the hour of 2:30 p. m. at the same place and date.

The direct examination of Mr. W. C. Hodgkins, continued as follows:—

By Mr. DYMOND:

Q. Will you please look at this map marked map No. 17 and state whether the deep water sailing channel between the points C-C-C is the same channel that, in its prolongation, would reach the Rigolets?

A. Yes sir.

Q. Will you please look at this map marked Exhibit E, and state if the red line extending eastwardly from the mouth of the Rigolets and joining the red line extending out of the mouth of Pearl river, is the deep water channel leading from the Rigolets to the channel between Isle à Pitre and Cat island?

A. When you say deep water channel, I suppose you mean—

A. Deep water sailing channel.

Q. That would be the usual route that a vessel would pursue, I should think.

Q. Is there any other deep water sailing channel, that you know of in this immediate locality coming out of the Rigolets?

A. It depends somewhat on just what you mean by that question. Do you mean the very deepest channel there is in that region, or any practicable channel?

Q. Any practicable channel?

A. Understand, of course, that all that country is very much the same; there is no very marked difference except in some particular spots, and vessels in order to navigate that region at all, must necessarily be of light draft, therefore there are alternative channels they might take, although they cannot be called the usual sailing channels.

Q. Are you prepared to say what the maximum draft of a vessel could be to navigate from the mouth of the Rigolets out through the pass between Cat island and Isle à Pitre, in a general way?

A. I should not want to fix an absolute limit, but I should say it would be imprudent to navigate a vessel in that channel drawing more than six or seven feet of water.

Q. Would there be any other channel other than that indicated on this map Exhibit E, where a vessel drawing six or seven feet of water, could navigate, between the mouth of the Rigolets and the pass separating Isle à Pitre from Cat island?

A. Oh, yes, it is quite possible for a vessel to go in other places.

Q. Will you please designate any sailing line, other than the one that you see indicated by the red ink line?

A. Well, you mean, to show any other designated line, or show any other possible line. There is no other line designated.

Q. I mean, coming out of the Rigolets and running eastwardly to the pass between Cat island and the Isle à Pitre?

A. Well, it would be quite practicable, of course, for a vessel to go down between Grant island and Petite Pass island, that is, a vessel of light draft.

Q. Taking the maximum draft that would be permitted on the line designated by red ink on this map E, is there any other well defined channel, where a vessel of equal draft could follow?

A. I don't know that I could say there is a well defined channel, but there — a considerable expanse of water where a vessel, according to this map, of course, where a vessel drawing seven feet of water might pass. The whole area is very much of the same depth except in certain places where deeper holes have been scoured out.

Q. Is this line which you see before you, designated in red ink, the line which you have designated as the deep water channel on the blue print which accompanied your report made to Mr. Tittman and concerning which you have testified today?

A. Without comparison I could not say it was identical; it seems to bear a close resemblance to it.

Q. Will you please compare the two.

A. Yes sir. (Witness compares the documents referred to.)

Q. Have you now made a comparison of the channel shown on your blue print being part of Document No. 11, with the channel shown in red ink on map Exhibit E?

A. That is, with the boundary line, you mean?

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Q. Yes.

A. I made a comparison with a number of selected points

Q. How did you find them to compare, in a general way?

A. In a general way they coincided, not strictly however, there were slight discrepancies that might be expected being drawn by different people with different ideas in view.

Q. Examine these blue prints which are attached to your report marked Document No. 11, and state whether you projected any lines on the original drawing of which this is a blue print and the purposes for which you projected those lines?

A. I suppose you refer to these lines that run approximately paral-ell to the shore, you want the explanation of them. I drew certain sets of lines representing approximately, lines paral-ell to the shore line under various hypotheses as to what the shore line might be.

By Judge GUION:

Q. What does the line marked nine nautical miles, from Isle à Pitre what does it indicate?

A. That is a portion of a line drawn paral-ell to the general coast line of the marsh land lying south of Mississippi sound and including Isle à Pitre.

Q. Drawn from what part of Isle à Pitre?

A. From any part, from all parts of it, what we call a paral-ell curve.

Q. Drawn from the eastern or northern shore?

A. The eastern extremity and northern shore would all come in there. If I may be pardoned for injecting a definition, I may say that when in mathematical parlance, we undertake to draw a paral-ell to a curved line, and by a curved line I mean any kind of a line, for any line is a curve, technically speaking, the paral-ell is the evolute of a circle which is rolled along that curve, that is to say, if you describe circles of a given radius from a number of consecutive points at any desired intervals along a shore, a line which will circumscribe the outer edges of all those circles will be the evolute of the original line and such line would be paral-ell to the original line. And that line on the map is a small portion of such a paral-ell line.

Q. What do the words nine statute miles next to the line marked nine nautical miles from Isle à Pitre, mean?

A. They mean that a line was similarly drawn with the radius of nine statute miles instead of nine nautical miles.

Q. From the same points?

A. Yes sir.

Q. What do the words nine nautical miles from Grand pass etc. mean?

A. They mean that a similar line was drawn from a general coast line leaving on Isle à Pitre passing down the western shore of Grand pass and skirting the islands which lie below it.

Q. What do the words nine statute miles mean?

Q. Was Mr. J. B. Baylor an assistant of the United States Coast and Geodetic Survey on that commission?

A. Yes sir. He represented the State of Virginia his native State in that matter.

Q. Did you represent any State in that instance?

A. No sir; the representative of Tennessee was Professor Andrew H. Buchanan of Cumberland university.

Q. What official connection did you have with that body that was to determine and re-establish this old boundary line?

A. On the organization, I suppose on account of my being from a neutral State, I was chosen chairman of the commission.

Q. Did this commission re-establish this old boundary line between Tennessee and Virginia?

A. Yes sir.

Q. Was that reported to the Supreme Court of the United States?

A. Yes sir.

Q. Was that report of yours approved by that court?

A. Yes sir.

Q. What was the next instance in which you were called upon immediately subsequent to that or about the same time?

A. I have already mentioned the Mason and Dixon matter.

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Q. In what way did you become connected with that matter?

A. Well I don't know anything about the antecedent circumstances, I was at the time on duty in the West Indies in command of one of our survey ships and I was notified that my services were needed in the United States, and on my return from the West Indies to the United States I was detached from the command of the ship and put in charge of this work.

Q. By whom?

A. By the Superintendent of the Coast and Geodetic Survey who was *ex-officio* chairman of the commission of the two States, there was a commission that represented each State and he was the chairman of the board to conduct the survey and I was designated as the engineer in charge and conducted the actual work.

Q. How did this particular controversy in regard to the Mason and Dixon line arise?

A. I don't think it is correct to say there was a controversy; it was simply an uncertainty as to the location of the boundary line.

Q. What was the character of uncertainty to which you refer?

A. It was merely that in certain places there were stretches where the line was not properly marked, the old marks either had been destroyed or had not existed and were insufficient and people could not tell on which side of the line they lived.

Q. What had occasioned this request for the establishment of the line?

A. It was done by agreement between the States and by authority of the respective legislatures. Each State appropriated a sum of money for paying each State's share of the expenses of the survey.

Q. Were you designated by the Chief or Superintendent of

United States Coast and Geodetic Survey to do the work in connection with the establishment of this line?

A. I was designated by the commission; but my selection was made by the superintendent undoubtedly.

Q. As I understand it then, there was a commission composed of a representative of the State of Pennsylvania and also a representative of the State of Maryland, and those two with the Chief of the United States Coast and Geodetic Survey or the superintendent, constituted the board to determine this boundary?

A. Yes sir.

Q. And the actual performance of the work was delegated to you by the Superintendent of the United States Coast and Geodetic Survey who was chairman of this commission?

A. Yes sir.

Q. Did you establish those lines?

A. Yes sir.

Q. Did you submit your report to the commission?

A. I submitted the preliminary report; the work has just been completed and the final report has not yet been submitted.

Q. There has been no final action taken on this?

A. No sir; but there is no dispute on it, so really in a sense no final action is necessary. It is merely a matter like building up an old fence that had tumbled down in places.

Q. What was the next instance wherein you had occasion to consider boundary matters?

A. The most recent one was in connection with the Alaskan boundary arbitration, under the treaty concluded in February 1903 between the government of Great Britain and the United States. There was a commission appointed by the President of the United States to present the case of the United States, and at the request of the Secretary of State I was designated as cartographer of that commission by the Secretary of the Treasury, who then had control of our bureau.

Q. Did you, in connection with this boundary dispute between the United States and Great Britain, have occasion to study this subject matter or the subject matter there involved?

A. Of the Alaskan boundary?

Q. Yes.

A. Yes sir, I did.

Q. Did you have charge of the charts showing the contentions of the United States Government in this matter?

A. Yes sir; I had personal charge of all the maps that were carried to London in our case. I also compiled for the case and for the counter case of the United States, atlases showing the maps on which the case of the United States chiefly rested, so far as it rested on maps.

Q. Was the decision of that tribunal in favor of the contention of the United States?

A. In a general way it was; not in all points, but in the main contention it was.

Q. Were these maps and charts prepared by you, used in arriving at that conclusion?

A. They were used in their deliberations, in the deliberations of the commission, but of course I have no means of saying how far they contributed to the result.

Q. Were you in attendance continuously at the discussions of this tribunal?

A. Yes sir, unless I was needed elsewhere.

Q. Did you have any connection with any boundary dispute between Missouri and any other State?

A. Missouri and Iowa, that case I mentioned.

Q. What connection was that; when was that?

A. That was in 1895.

Q. Well, now, what was the next instance after the Alaskan boundary matter wherein you were called upon to do any work in connection with the establishment of boundaries between States?

A. I have not, since then, had anything—I suppose it would be rather unfair to your case to leave that out. I don't want to burden you unnecessarily but I was just thinking that I had skipped over this matter, the report I made at the request of Mr. McLain one of your Congressman.

Q. When you say one of your Congressmen—

A. I was looking at Mr. Flowers.

Q. Who is Mr. McLain?

A. Perhaps you will pardon me if I go back and state that in addition to those cases I have mentioned, that in 1901 I think it was, I was brought into the case in a way, into this case which is now before the court, at the request of F. A. McLain one of the Congressmen from Mississippi who asked our office to furnish him with any information which could be obtained in Washington relative to the location of the boundary line between the States of Louisiana and Mississippi.

Q. Will you please look at this document which is, for the purposes of identification to be marked Document No. 9 and state whether it is composed of certified copies of the correspondence between the United States Coast and Geodetic Survey and Mr. F. A. McLain member of Congress from the State of Mississippi on the subject concerning which you have just been testifying?

A. These are apparently certified copies of the original papers.

505 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence, and offers in evidence the said Document No. 9, being certified copies of a letter of Mr. F. A. McLain to Hon. O. H. Tittman dated 27th January 1901; of letter of O. H. Tittman to Hon. F. A. McLain dated February 1st 1901, and of letter from O. H. Tittman to Hon. F. A. McLain dated

bruary 8th 1901, which the commissioner is requested to mark document No. 9 and a copy thereof is tendered to the State of Mississippi.

OBJECTION.—Mr. WILLIAMS: We object to copies of these letters being offered in evidence and note here an exception.

Mr. WILLIAMS: We ask, at this point, that an exception be noted to the particular surveys in which the witness has been engaged involving boundary disputes between States, and especially as to the results of his work.

By Judge GUION:

Q. I notice that in the letter of date 27th January 1901, signed by A. McLain and addressed to Hon. O. H. Tittman, Superintendent of the Coast and Geodetic Survey reference is made to a letter of I. Heidenheim of Biloxi, Mississippi. Will you please examine the document which is now shown to you and which will be marked document No. 10 and state whether you can testify to the signature that is signed there. It is not certified.

A. The signature is all right; I can testify to that.

Q. Whose signature is that?

A. F. W. Perkins, otherwise Frank Walley Perkins.

Q. Who is he?

A. He is chief assistant to the Superintendent of the Coast and Geodetic Survey and in the superintendent's absence acts for him.

Q. You recognize his signature?

A. I do.

Q. As being the signature to this letter marked Document No. 10?

A. Yes sir. His signature there is authentic.

Judge GUION: I offer this letter in evidence in connection with the testimony of the witness and which is marked Document No. 10. For the purpose of complying with the agreement entered into between the States of Louisiana and Mississippi counsel for the State of Louisiana now reads the letter so that it may be embodied in the copy of the evidence which will be delivered to the State of Mississippi.

"DEPARTMENT OF COMMERCE AND LABOR,
COAST AND GEODETIC SURVEY,
WASHINGTON.

Hon. Walter Guion, attorney general, State of Louisiana, New Orleans, La.

SIR: Your telegram April 11th asking that two certified copies of the letter of I. Heidenheim referred to in letter of McLain of 27th January 1901, be sent you is received.

In reply I beg to state that the letter referred to is not on the files of this office having been returned to Mr. McLain at his request.

Respectfully,

F. W. PERKINS,
Acting Superintendent."

By Mr. DYMOND :

Q. Do you know what became of that letter of I. Heidenheim?

A. I think that is fully covered by the letter that has been referred to just now.

Q. Do you personally know anything about it?

A. No sir.

Q. In these various instances wherein you have become associated in one way or another in boundary matters, have you had occasion to study the issues which were presented in each case?

A. To the extent that was necessary for the performance of my duties.

Q. From the experience that you have had, do you consider that you are a competent authority or an expert on the subject of boundary controversies?

A. Well, I should not want to assume too much in that respect; but I think I might fairly be called an expert in such matters as the term is generally understood.

Q. Have you ever had occasion to study or to consider international law in any of its phases or aspects in connection with the controversies as to boundary disputes pending between States which have come under your observation and concerning which you have had to take action?

A. Well, only so far as they came in direct connection with my duties and more especially in connection, naturally, with the Alaskan boundary matter, that being purely an international matter.

Q. These States you have referred to concerning which you were called upon to assist in settling boundary matters, were they sovereign States of the United States?

A. They were.

Q. Were you possessed of the information and study which you have just mentioned, at the time that the request came from Mr. McLain member of Congress from Mississippi to the United States Coast and Geodetic Survey, for a report on the boundary between the States of Louisiana and Mississippi?

A. Well, of course, I have gotten a good deal of information out of our Alaskan arbitration and my attendance in London brought a good many points to my attention, in a general way I may say I was possessed of information but perhaps not quite so fully.

Mr. WILLIAMS: Objection is repeated to all this testimony as to the witness' knowledge of international law and as to his being an expert on boundary questions.

Q. Mr. Hodgkins, when this request came from Mr. McLain, to whom was it directed?

A. To Mr. Tittman.

Q. Who is he?

507 A. The Superintendent of the Coast and Geodetic Survey.

Q. What became of the request so far as action thereon was concerned?

A. The action taken was to request me, or direct me perhaps would be the better phrase, to procure the information requested by Mr. McLain.

Q. Do you know why you were requested to perform this official duty?

A. Only by conjecture. I am, like all other officers of the survey, subject to the superintendent's orders and I am supposed to fulfill the duty assigned me.

Q. Have you previous to that been connected in one way or another with similar controversies between the States of the Union?

A. With those I have already stated in my testimony.

Q. Did you make a study of the facts and issues in connection with the request of Mr. McLain?

A. I think I could hardly say that. I made a study of the facts on record in Washington. What Mr. McLain asked for, as I understand it, was not the opinion of the Coast Survey in the matter, but the information that was in Washington. The Coast Survey, of course, as you will understand is not authorized to establish boundaries, but we try to furnish any information that is called for, as far as we can.

Mr. WILLIAMS: We want to except to all the testimony relative to Mr. McLain's letter, as to what it contains and the acts of the witness and from whom he received directions in that matter. It is understood this is a general exception to all testimony on that line.

Q. Did you make the investigation rendered necessary by the request of Mr. McLain?

A. I did.

Q. Did you make a report as the result of your investigation?

A. Yes sir.

Q. Was that report transmitted to Mr. McLain member of Congress from the State of Mississippi?

A. I think it is so stated in one of the letters you have just filed.

Q. I mean a copy of the original report?

A. I couldn't say of my own knowledge whether anything was sent to Mr. McLain or not, but I take it that the statement in the letter is correct.

Q. What work did you do prior to your making this report to the Superintendent of your Coast and Geodetic Survey?

A. I don't know that I fully understand the question. Do you mean in relation to that matter?

Q. Yes.

A. Well, I state in the report that I examined all the maps that I could conveniently get hold of in the library of the Coast Survey and the Library of Congress, and looked over the published records of the organic acts of the two States and I consulted the records of

520 A. Fixed theoretically but not practically and we fixed it practically.

Q. Did you say the legislatures of the two States declined to accept it?

A. No; they did not decline to accept it, they simply did not appropriate money to put up permanent marks.

Q. But the line you marked there is one that still exists between those two States across that territory?

A. Yes sir.

Q. And you say you helped to mark Mason and Dixon's line?

A. Yes sir; I have just finished marking that.

Q. Is that satisfactory to both States?

A. I have not heard any complaint.

Q. You say you are also familiar with international law?

A. I beg your pardon, I don't think I stated that. I think you are mistaken.

Q. Didn't you say you made a special study of international law?

A. No sir; at least I don't remember of doing so. I said I had occasion to come in contact, I might say, with international law.

Q. Did I understand you to say that you have frequently had occasion to apply the deep water channel rule?

A. No, I don't think you understood me to say that.

Q. Didn't you say in your examination in chief that this rule was applied in the settlement of the dispute between Maryland and Virginia through Chesapeake bay?

A. To a certain small portion I understand the rule was applied, but, as I said before, I had nothing to do with determining that boundary; my function was only to help lay it down.

Q. Didn't you give it as your opinion in your examination in chief that in going to the gulf of Mexico from the mouth of Pearl river, you would follow the deep channel line in this instance?

A. I indicated that that seemed the most probable.

Q. Didn't you give it as your opinion that this is a line that international law would fix as a correct line?

A. I don't remember that I stated that.

Q. Can you state what that rule is that you applied in this case?

A. I think I can state the substance of it. Of course I do not profess to be an authority on international law. I am not attempting to qualify as an expert on that; but my understanding of the rule of international law in regard to the deep water channel, is, that where the boundary between two contiguous States is in or over water, the line should follow the line of the deepest channel where the deepest channel is not coincident with the middle. Under the ordinary rule it would be mid-channel, that is, mid-way between opposite shores, but where there is a channel that lies to one side of the middle line, that deep water channel would be followed. And if there was more than one channel, the deepest one or the one that is usually used for purposes of navigation, practically the deepest

channel would be the one to be adopted. That is the substance of my understanding of the rule.

Q. To what bodies of water separating States would you apply that rule?

A. I could—of course if you ask me for particular instances—

Q. I don't ask for particular instances; I want to know the general rule on the subject.

A. I think I can remember two or three instances in which it has been applied.

Q. I don't ask for instances?

A. I don't quite understand the purport of your question.

Q. I wish to know to what bodies or to what kind of bodies of water separating States, is this deep channel rule you speak of applied?

A. I should say it would be applied primarily of course in the case of rivers which are the most common water boundaries, estuaries of rivers, or sounds or arms of the sea.

Q. It does not apply, as a rule, particularly to bodies of water that have regular currents?

A. I do not know that the question of current would enter materially, it does not seem so to me.

Q. In this particular case, do you say that the line marked on your sketch No. 3, attached to your letter to Mr. F. A. McLain—

A. I beg pardon, that is my report to O. H. Tittmann

Q. Well, your report to Mr. Tittmann marked Document No. 11, do you undertake to say that the line you have marked as indicating the deep water channel from the mouth of Pearl river eastwardly, and then south to the gulf of Mexico, that that is the deepest channel across that territory?

A. Not in all places.

Q. Do you undertake to say that it is the only deep channel?

A. No sir.

Q. Do you undertake to say that that is the only route that ships or boats—do you undertake to say that boat that can travel this route can travel no other routes between those two points?

A. No sir; I have already stated in my examination in chief, that vessels, small crafts, suitable to navigate those waters, could go by other routes.

Q. Have you ever been in this territory yourself?

A. No sir.

Q. You get this information as to the location of this deep water channel from maps and charts?

A. From the maps of the Coast and Geodetic Survey?

Q. I will ask you what the water immediately south of the Mississippi main land is called?

A. I understand it is called Mississippi sound.

Q. I will ask you how far it is from the most eastern mouth of Pearl river to the waters of the gulf of Mexico?

A. Allow me to ask you what you mean by the gulf of Mexico;

do you want me to put my construction on the gulf of Mexico, or your construction?

Q. Your construction?

A. Of course in all of these things, you understand, there is a little room for latitude in the interpretation. I assume that you mean the distance according to the sailing route that is laid down on the maps?

Q. I will ask you to give that first?

A. You want that in statute or nautical miles?

Q. Both.

A. From the beacon at the mouth of Pearl river to the line joining the South spit of Cat island and the southeastern point of Isle à Pitre, on this map No. 17, the distance is a little scant of 26 statute miles as scaled by me from the map; in nautical miles the same distance is about 22½ miles.

Q. In making that measurement what point did you take as the gulf of Mexico, the waters of the gulf of Mexico?

A. I stated in my answer I took a line joining the South spit of Cat island and the southeastern point of Isle à Pitre.

522 Q. How far is it from the point where the southern boundary line of the State of Mississippi, going westward, first intersects this deep water channel lies, to the most eastern mouth of Pearl river?

A. You will have to indicate for me on the map just what line you mean, because I cannot undertake to say what is the southern boundary of Mississippi.

Q. I mean the line drawn on Exhibit E as the southern boundary of the State of Mississippi, designated in red ink?

A. I understand you want the distance from the point of intersection of those two red lines on Exhibit E to the most eastern mouth of Pearl river. I suppose you mean to follow this red line all the way down here?

Q. That is the way the question is stated.

A. The distance along the line between the points indicated is just short of 33 statute miles or almost exactly 28½ nautical miles, as scaled by me from this map marked Exhibit E.

Q. Are you able to locate on map No. 7 the point in the gulf of Mexico from which you measured any of these distances?

A. I can do it by construction.

Q. Well, for other purposes I wish you would please locate on map No. 7, that point in the gulf of Mexico or in the waters there?

A. I have located the point by measurement from the South spit of Cat island and from the west end of Ship island.

Q. Please indicate it on the map with ink.

A. How would you have it indicated?

Q. Just however you wish.

A. (Witness marks a circle around the point with a letter A just to the right in quotations.)

Q. I will ask you to please measure from the point you have just

located on map No. 7, to what you consider the physical coast line on the western side of Lake Eugenie?

A. I understand you to mean the point at which this broken red line intersects the shore line?

Q. Yes?

A. You wish the distance measured in a straight line?

Q. Yes?

A. From the point indicated in the gulf of Mexico marked A on map No. 7, in a straight line to the point of marsh on the west side of Lake Eugenie nearly south of the west end of the broken red line marked 18 statute miles, the distance scaled from this map, is 30½ statute miles or 26½ nautical miles nearly.

Q. I will ask you to please measure on the same map, the distance between the most eastern mouth of Pearl river to the western point from which those measurements were made?

A. This being a smaller scale map I shall have to measure at the point of marsh at the mouth of Pearl river, I think, in order to get any result, instead of measuring from a point in the water. From the southern point of the marsh on the west side of the eastern mouth of Pearl river, in a straight line to the point on the western shore of Lake Eugenie afore-mentioned, the distance in a straight line on this map is 18½ statute miles or 16 nautical miles nearly.

Q. I will ask you please to measure from the southeastern projection north of Point Chico to the point in the waters of the Gulf designated by you on this map No. 7 as A in quotations?

A. That distance as scaled from this map is 31 statute miles or 26½ nautical miles nearly.

Q. I will ask you to state whether you have measured in a straight line between those two points?

A. Those last distances were taken in a straight line.

523 Q. If I understand you correctly, you mean that in all these measurements up to this time you have measured in a straight line between the points except—

A. Not in the measurements from the eastern mouth of Pearl river.

Q. Except that from the most eastern mouth of Pearl river along the deep water channel to the point marked A in quotations?

A. Yes sir.

Q. Well—

A. I will put it another way?

Q. Just explain—

Q. The distance from the point A in quotations, to the western shore of Lake Eugenie and from that point to the mouth of Pearl river and the distance from the point A in quotations to the point northwest of Point Chico, I measured in straight lines.

Q. Is that all you want to say about how you made those measurements?

A. I think I have covered it.

Q. I will ask you please to measure from this last point established

north of Point Chico, to the point from which you measured on the western side of Lake Eugenie?

A. The distance between the point noted, measured in a straight line on this map, is $14\frac{1}{2}$ statute miles or $12\frac{1}{2}$ nautical miles nearly.

Q. Now, state, please, whether that is a straight line?

A. I stated in my answer that it is a straight line.

At this stage of the proceedings the hearing was adjourned by the commissioner until April 13th 1904 to be resumed at the same place at the hour of 10.30 a. m.

Resumption of Proceedings.

APRIL 13TH, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed by the commissioner at the same place.

Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, att'y general State of Louisiana.

Mess. John Dymond, Jr. and F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. William Williams, att'y general of the State of Mississippi.

J. N. Flowers, Esq., ass't att'y gen'l for the State of Mississippi.

Examination of W. C. HODGKINS resumed.

By Mr. FLOWERS:

Q. Mr. Hodgkins, the testimony you have given here is simply the result of your investigations made at the instance of Mr. McLain of Mississippi; is that true?

A. Precisely. I beg pardon, one minute, you refer to that report of course?

Q. Yes?

A. Yes sir.

Q. And the result of your investigations at the instance of
524 Mr. McLain is embodied in this report to the Superintendent of the Coast and Geodetic Survey?

A. Yes sir.

Q. You have never been in this territory?

A. I have not.

Q. You got your information from the maps, charts and books that were available at that time, and this report of yours is made up solely from these maps, books and charts which you examined?

A. That is a correct statement in reference to the contents of that report.

Q. You have attached to this report a list of the maps and charts examined by you, have you not?

A. A list of certain ones of those which I have examined.

Q. Does this list embrace all such maps and charts examined by you in making up this report?

A. It embraces all which show the Malheureux islands with distinctness.

Q. What is the oldest map or chart of this territory you found in this investigation?

A. I am unable to answer that question further than by referring to the appended list. I did not preserve notes of all of the maps which I inspected.

Q. I show you here the list appended to your report and will ask you please to answer from that list what is the oldest map or chart you discovered in that investigation?

A. The oldest map, mentioned in the list attached to my report or mentioned in it, was published in the year 1806 by B. Lafon.

Q. Please state the next oldest one you discovered?

A. The next oldest map cited is one by William Darby, New Orleans, dated 1816.

Q. Mr. Hodgkins you exhausted the sources of information?

A. I should hardly like to say that.

Q. One moment. As far as you were able to do it at that time?

A. I should hardly like to say that I exhausted the sources of information, but I took note of all which I could conveniently get access to in Washington.

Q. What opportunities did you have to get at the original sources of information on this subject?

A. As stated in my report I had the maps and atlases contained in the libraries of the Coast and Geodetic Survey and of Congress; I also was allowed to see the plat books at the General Land Office, procured some further information from the Law Library of Congress.

Q. You did this work in Washington?

A. Yes sir.

Q. And you had access to the Congressional Library?

A. Yes sir.

Q. And to the records in the United States Land Office?

A. Yes sir.

Q. Please examine sketch No. 2, blue print, appended by you to the said report, and explain why the lines designated as 18 statute miles and 18 nautical miles, respectively, from the Mississippi coast—

A. I don't understand you.

Q. —were drawn on this sketch?

A. This sketch was drawn for the information of the Honorable Mr. McLain and the lines mentioned were drawn thereon for his information and used as he saw fit.

Q. Mr. Hodgkins, suppose the act of Congress creating the State of Mississippi had been turned over to you and you had been di-

525 rected to mark off the line constituting the southern boundary of the State of Mississippi, where on this sketch No. 2 prepared by you, approximately would you have located that line?

A. It seems to me that the question ought to be somewhat qualified by giving me some further conditions, that is to say, whether I am to take into consideration the existence of the State of Louisiana or consider there is no State of Louisiana in existence.

By Mr. WILLIAMS:

Q. Well, the purpose of that question is this, that you may distinctly understand what we want to know, if you had been furnished the act creating the State of Mississippi and directed to find its boundary, what would you indicate on that sketch as the southern boundary of the State of Mississippi?

A. That is, you want my own personal opinion?

Q. Yes, where you would put it, I want to know?

A. According to my understanding, the southern boundary of the State of Mississippi extends from one island to another, on this sketch No. 2, from the southern point of Ship island to the southern point of Cat island and thence along the line joining the opposite headland of Isle à Pitre to the mid-channel, thence up the mid channel to the eastern mouth of Pearl river; that would be my own interpretation of the organic act.

Q. That would be your interpretation of the statute?

A. Yes, providing for the organization of the State of Mississippi.

Q. Is there anything said in the act of Congress creating the State of Mississippi, about the deep water channel?

A. Not to my knowledge.

By Mr. FLOWERS:

Q. When you say that you would in this marking off the southern boundary line of the State of Mississippi, under the said act of Congress, follow the deep water channel after the line running westwardly strikes that channel do you mean to say that you would do this if you were simply attempting to describe the line as defined by that act? Or do you mean that that is the way you would reconcile the boundary lines of the two States construing the two acts together?

A. The latter supposition would express my idea better. As you asked my personal opinion as to where the boundary line would run I feel bound to take into account my personal knowledge of the pre-existence of the State of Louisiana.

Q. Please state whether, as an expert civil engineer, with your knowledge of the Mississippi coast, there would be any difficulty in marking off the southern boundary line of the State of Mississippi with that act standing alone?

A. I understand you now to mean to ignore the existence of Louisiana?

Q. Yes?

A. I should say that in such a case it would be a question somewhat difficult of interpretation to fix exactly the southern boundary of Mississippi.

Q. Wherein would the difficulty lie?

A. This is all a matter of my opinion, of course?

Q. Yes?

A. The difficulty, to my mind, would lie in the difficulty of determining just what islands should be included under this general designation of six leagues from the shore.

Q. Would there be any difficulty in determining what islands were within six leagues of the shore?

A. The difficulty would come from the fact that it would be almost inevitable that certain islands would be bisected by such line and that consequently a question of interpretation would arise as to whether such islands should be included or excluded in the six leagues limit.

Q. Is that the only difficulty which you think would be met?

A. That is the only serious difficulty I see, assuming the premise that nothing is to be considered but the State of Mississippi itself.

Q. I will ask you if the lines marked by you on sketch No. 2 as being 18 statute miles and 18 nautical miles respectively, from the Mississippi coast, do not approximately designate the southern boundary line of Mississippi as it would be drawn if that act stood alone?

A. In part, at least, probably so, as far as they are drawn. With this proviso, that I should not understand the boundary to extend to the distance of six leagues from the shore universally, that is to say, where there were no islands to be included. I should not think the act conferred jurisdiction to that extent over open sea.

Q. The lines drawn by you on this sketch No. 2 are so drawn as to embrace all islands within six leagues. Let me state the question differently. Those lines, as I understand it, are so drawn by you as to embrace all islands within 18 miles of the Mississippi coast?

A. That was not the intention of drawing the line. The lines were drawn simply as lines approximately parallel and approximately at the distances stated, from the shore of Mississippi. They were not drawn for the express purpose of including islands, but merely to show how parallel lines would lie in those particular regions.

Q. Those lines drawn by you indicate the southern boundary line of the State of Mississippi in the waters south of the main land, as fixed by the act of Congress creating the State of Mississippi without any reference to the claims of Louisiana; is that true?

A. That would not be my understanding of it.

Q. I do not mean to say that that is your idea about this case—

A. No, I understand.

Q. —but I only mean to say that those lines on that sketch indi-

A. They have the same force as in the previous case, the distance of nine statute miles from the same points.

Q. What do the words nine nautical miles from the main body of marsh land, mean?

A. They mean that the distance was measured similarly as in the previous case, from what is here termed the main body of the marsh land, beginning at what I think is called Nine Mile bayou.

Q. What do the words nine statute miles which words are to be found along the line close to the words nine nautical miles from main body of marsh land, mean?

A. They mean, similarly, the lines parallel, at a distance of nine statute miles, to that same hypothetical coast line.

Q. Why did you use the words from main body of marsh land?

A. That appears on the map itself, that body of marsh is shown, substantially, as a continuous piece of territory, not much
515 broken up into islands and these are merely illustrations of what might happen; they are not intended to be exclusive in any way of any other hypothetical lines that might be drawn, but to illustrate how such lines might be drawn under various hypotheses.

Q. Will you please look at this chart which is now submitted to you as map No. 7 and state whether the lines projected on that chart, correspond and are identical with the lines projected by you on your blue print attached to your report marked sketch No. 2.

A. I presume you mean as to their being substantially the same?
Q. Yes?

A. In answer to your question I should say there is a substantial agreement throughout, with a slight discrepancy which is almost inevitable in the map maker's work.

Q. I did not examine you concerning the two lines on this map, sketch No. 2, a moment ago, because I did not notice them. Will you kindly state what the two lines mean, one of which is marked 18 nautical miles from coast of Mississippi and the other near it is marked 18 statute miles.

A. Those lines are similar to the ones previously described; they are drawn in a similar way, parallel to the outer coast of the main shore of Mississippi.

Q. What are they intended to indicate on your sketch No. 2?

A. They are intended to indicate the approximate supposed locations of lines parallel to the Mississippi coast at the distances stated.

Q. Of 18 statute and 18 nautical miles respectively?

A. Yes sir.

Q. Do the two lines marked on the chart marked map No. 7, also marked 18 nautical miles from the coast of Mississippi and 18 statute miles from the coast of Mississippi, agree with the lines projected by you on your sketch No. 2?

A. In all essential respects they do.

Q. Would it be possible, drawing a line from Malheureux point to Isle à Pitre, to the eastern extremity of Isle à Pitre, granting for

the sake of argument that that distance covers the coast or shore line of the State of Louisiana, to get north a distance of nine miles or three leagues, and at the same time go from Mississippi following the meander of her coast a distance of 18 nautical and 18 statute miles south; would it be possible I say, to prevent an overlapping of boundaries; would there not be a conflict of boundary lines between the two States?

A. I am not sure that I fully understand the purport of your question; but I see no necessity for a conflict. Assuming that Louisiana was established before Mississippi her boundary would naturally be definite and Mississippi's boundary would necessarily fall outside of that. I am not sure that is the meaning of your question, however.

Mr. WILLIAMS: Counsel for the State of Mississippi object to all his testimony as to the witness's opinion about matters on a subject he has not qualified as an expert.

Q. Assuming for the sake of argument, that the shore line beginning at Malheureux point and running eastward, as far east as the eastern extremity of Isle à Pitre, belongs to the State of Louisiana, do I understand you to mean that if Mississippi were to go south in order to get an 18 mile stretch, that it would not overlap that territory from Malheureux point to Isle à Pitre?

A. As I said before, I cannot see—

Q. The map shows that but—

A. Granting your assumption that this is Louisiana territory, I do not see how Mississippi could have anything to do with it.

Q. Then the line of Mississippi would go south of that line from Malheureux point to Isle à Pitre, if you would go 18 miles from the Mississippi shore?

A. Undoubtedly.

Q. What do you consider the coast line of Louisiana from Malheureux point going eastward?

A. There comes up that old question of what is the coast line, whether you mean the physical or political coast?

Q. I want you to define both?

A. When we speak of the physical coast of a continent or an island, anything of that sort, we mean the boundary between the solid land and the water, and when I say solid land I do not mean necessarily very solid but continuous land. That line exists for the purpose of boundary between those two formations. But when we talk about the political coast line we mean the line that is supposed to follow around the outer portions of the coast, running across bays from head land to head land, jumping across narrow inlets, and generally in circumscribing the whole territory of the State or nation.

Q. What would you give as the coast line, for the purpose of establishing a boundary, starting from Malheureux point going eastward?

A. That would depend on the circumstances of the case, I should say; whether there was a particular line specified or not.

Q. Is there a coast line defined on this map before you, marked No. 7?

A. There is, of course, a physical coast line which defines the boundary between land and water.

Q. What is that on this map?

A. I should have to trace that out if you want to get the actual limits. It is a little hard to say. As far as appears on this map, answering your question directly, the physical coast line, the edge of that coast line properly speaking, the edge of the absolutely continuous shore line, on this map, appears to run through what is called Otter bayou and Bayou La Loutre from the southern part of Lake Borgne down to Breton sound; that appears to be water communication, and as far as this map shows, that would be the edge of absolutely continuous territory.

Q. Is there a physical coast line from Malheureux point to Isle à Pitre?

A. No; I cannot say there is a continuous physical coast line.

Q. Is it a coast line from which you would establish a boundary?

A. Well,—

Q. Assuming that that territory belongs to the State of Louisiana?

A. Undoubtedly, with that assumption that would be the coast line.

Q. From what point?

A. As you stated just now, from Malheureux point to the Isle à Pitre, that is the limit you wish to cover?

Q. Yes, that is the limit of—

A. Undoubtedly, if that is a part of the State of Louisiana the coast line would follow along this line, the coast line for the purposes of jurisdiction, from Malheureux point to the north eastern extremity of Isle à Pitre would follow along the shore, crossing the coves and bayous encountered on the way.

517 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said map marked map No. 7, and tender to counsel for the State of Mississippi a copy of said map.

By Mr. ZACHARIE:

Q. In your experience in adjusting boundary lines, is there a well recognized distinction between shore and coast?

A. In certain cases.

Q. What is that distinction?

A. The shore, the term shore, as I understand it, is substantially identical with what I just called the physical coast line, that is, it is the actual boundary between land and water. The coast line may or may not be the same line, the coast line for purposes of jurisdic-

ion. The coast line for purposes of jurisdiction may depart very far from the physical coast line of the main body of the State.

Q. What would be the coast line as distinguished from the shore line, for instance, suppose that along, some distance from the shore outside of the three mile limit, the ordinary limit, there was a line of broken islands; what, in such a case as that would be the coast as distinguished from the shore?

A. My understanding of the rule of international law, in that matter, is that each case has to be determined on its own merits. In some cases, in the majority of cases perhaps, the coast line would be held to follow the outer edge of the outlying islands.

Q. I ask these questions—

Mr. FLOWERS: Counsel for the State of Mississippi object to the introduction of testimony relative to what the witness's idea may be about international law.

Q. The question I asked you, Mr. Hodgkins, was, as a geodetic surveyor, what would you consider the difference between the shore line and the coast line?

A. Well, I do not know that I can add much to what I said, unless I would give a particular instance; I think it depends so much on the particular circumstances of a case.

Q. Now, the boundary line of Louisiana in the act admitting it into the Union says all islands within three leagues of the coast, the boundary line as given in the admission of the State of Mississippi says all islands within six leagues of the shore. Now, as a geodetic surveyor, if you were called upon to run those lines, what distinction, if any would you make between the word shore and the word coast?

A. Well, now, having the particular instance, I can answer that a little more plainly. Referring to this map which is marked No. 7, which shows the whole extent of Mississippi sound, the distinction between the coast and the shore, is, I think, quite evident there, that is, it is perfectly obvious what the shore is, to my mind, that is, it is where the main land terminates and the water begins, and Mississippi is entitled to any islands not already granted, I assume, which lie within six leagues of that shore; but, the coast of Mississippi, as I understand it, runs along the outer edge of that group of islands, going from one island to another, across the inlets, and I understand that jurisdiction would extend to the distance of three nautical miles from the outer shores of those islands.

Q. Apply the rule upon which you act, to the phraseology contained in the act admitting Louisiana where the word coast is used?

A. That is, you want my personal interpretation of it?

Q. If you are given certain directions in writing to draw a line, or run a line, with those instructions, one giving so many leagues from the coast and the other so many leagues from the shore, you have now given us what you consider the difference in Mississippi, that is to say, six leagues from the shore would include these islands,

and if it were three leagues from the coast it would have a different meaning, it would go from the outside of the islands?

A. Shall I interpret it?

Q. Now, apply that rule to Louisiana, I say where would you run the line from there?

A. I think I have already indicated in my report that there is a possibility of different interpretations of that, but my personal opinion on the matter is that the coast line would follow, what I call the political coast, along the outer edges of the group of islands.

Mr. FLOWERS: Counsel for the State of Mississippi object to the testimony as to any opinion of the witness.

By Mr. DYMOND:

Q. Do you refer to the stretch between Malheureux point and Isle à Pitre as the coast?

A. I was referring to that as part of the political coast line.

By Mr. ZACHARIE:

Q. In your report and the list of maps that you have given, you have stated a wide variation between three different list-of maps. How do you account for that variation?

A. Well, it is somewhat difficult to account for such variations in any logical way, but mainly I think they are due to carelessness of the map makers, the map makers are not sufficiently careful what they put on the maps.

Q. Is it, or is it not a fact, that the subsequent map makers and cartographers will follow and copy errors which may exist in the originals, so that there may be a series of maps originating in an original error?

A. That is undoubtedly frequently the case.

Q. What is the original map called among cartographers?

A. We generally speak of original maps as mother maps.

Q. And those that proceed from that map, what do you call them, have they any name like family—

A. They have no special name designating them, simply maps; I could illustrate that perhaps in a very striking way by the instance about the northwest coast of America over which there has been so much dispute. In the latter part of the 18th century,

519 Captain George Vancouver of the British navy made an exploration of that coast and he made a series of maps which were, you might say practically for 100 years, the only source of information on all matters along that coast. His maps were copied by cartographer after cartographer and they were the mother maps of that region. That is about as striking an instance as I know of.

Q. Were there errors in the original maps?

A. Yes sir, there are some errors. Of course Van Couver was a wonderful man for his day, but he did not have the data to make his maps complete.

Q. And these errors were carried into the maps which were copied from his maps?

A. Yes sir, naturally.

Q. To what would you attribute the variation between the two maps published by a surveyor and cartographer within the space of two or three years, which are conflicting on a particular point; to what would you attribute that variation?

A. It is hard to say.

Q. For instance, to give you an instance. Hardee's map of Louisiana which was published about 1870 gave some of these islands to Mississippi; Hardee's map of Louisiana which was published later and a second edition of Hardee's map, produced, gave these islands to Louisiana. Now, to what would you attribute this variation and difference on the part of this same cartographer?

A. I say in that case it was sheer carelessness and neglect.

Q. Could it not be attributed to the fact that he got, in that interval, more definite information and more correct information?

A. That might be so, but it would be purely conjectural I would say.

Cross-examination.

By Mr. FLOWERS:

Q. You say you have had experience in several cases of disputed boundary questions between States or sovereignties?

A. Yes sir.

Q. You say you have had experience in cases that involved the settlement of water boundaries, did I understand you to say, between States?

A. I have had experience in regard to the settlement of water boundaries between Maryland and Virginia.

Q. And that was an oyster dispute too?

A. Well, the oyster matter entered into it naturally; it was not really an oyster dispute.

Q. And you say in that case your decision of the matter was accepted by the people of the two States?

A. I did not make any decision in that case. I had no decision to make.

Q. Did you say the line that you surveyed was the line finally agreed upon and accepted?

A. The line had been previously agreed upon but not marked.

Q. You marked it?

A. Mr. Baylor and myself marked the line in accordance with the previous agreement.

Q. You surveyed a line or marked a line that had already been surveyed?

A. It had not been surveyed but had been agreed upon in principle and laid down on the maps.

Q. In other words you marked a line that had been fixed?

Survey, a bureau of the Department of Commerce and Labor; what did you mean by that?

A. About what part of it?

Q. What did you mean by the term Coast and Geodetic Survey and your connection with it?

A. The Coast and Geodetic Survey is a bureau of the Government organized for the purpose of making surveys of the coast of the United States, of the islands belonging to the United States, and of the sea within certain distances of the coast of the United States.

Q. You say of the Government, you mean the Government of the United States?

A. Yes sir.

Q. What other duties do they perform?

A. Well——

Q. Than to survey the boundary lines of the United States Government?

A. It is not a function of the Coast Survey to inspect boundary lines; we sometimes do it at the request of the State governments but otherwise, not. The States are independent sovereignties in that respect.

Q. Then the bureau of the Coast and Geodetic Survey is a department of the United States Government for the purpose of making surveys of the territory belonging to the United States, independent of the different States of the Union?

A. Yes sir, except that, I beg to correct counsel in the word department. It is not called a department.

Q. So that we may understand that and get it in the record, just explain fully, in your own way, what you mean by the Coast and Geodetic Survey?

A. The Coast and Geodetic Survey took its rise from an act of Congress passed in the year 1807, approved by President Jefferson, providing for a survey of the coast of the United States for the benefit of commerce and navigation and for the purposes of defense. That survey, with some rather long intervals in its early history, has been prosecuted ever since for the purpose, primarily, of furnishing charts for the use of navigators, furnishing military maps for the use of the army and for the navy in the defense of the coast; and also under subsequent enactments of Congress the survey has been extended in certain respects to the interior making a geodetic connection between the Atlantic and Pacific coasts by triangulation across the continent; and since our insular possessions were obtained has also been extended to them.

Q. What other duties does the Superintendent of the Coast and Geodetic Survey perform than those you have mentioned?

A. He has general supervision of those operations; in addition he is sometimes called upon for special duties by other departments of the Government, frequently by the State Department; at the present time he is commissioner for the United States in the delimita-

tion of the boundaries between the United States and Canada of the northwestern country as it is commonly called and of Alaska.

Q. Who is the Superintendent of this Coast and Geodetic Survey?

A. At present it is Mr. O. H. Tittmann.

Q. By virtue of what authority does he hold his office?

A. By appointment; he was appointed by the President on the recommendation of the Secretary of the Treasury, that is my understanding of it.

Q. How many assistants has he?

A. I cannot give the exact number, but in the neighborhood of 50.

535 Q. By whom were they appointed?

A. Most of them by the Secretary of the Treasury. But now by the Secretary of Commerce and Labor since the transfer. Almost all of them were appointed by the Secretary of the Treasury as the transfer only took place on the first of July last.

Q. You are one of his assistants?

A. Yes sir.

Q. What are the duties of these assistants?

— To assist in executing any duties necessary for the purpose of the work, under the direction of the superintendent.

Q. What kind of work do you do?

A. We do almost all kinds of work.

Q. Explain to us what kind of work?

A. It would be quite a story; but, in the beginning if one starts out to make a survey from the beginning, he has in the first place to measure the base line.

Q. What kind of survey do you refer to?

A. To such surveys as the Coast Survey usually makes, of sections of the coast. Do you wish me to continue?

Q. Yes?

A. Well, the primary object of the bureau, as already stated, is to make accurate charts of the coast of the United States. That work is all based on triangulation and fixed in position upon the earth by astronomical determinations of latitude and longitude and azimuth. The subsequent detailed surveys, both topographical and hydrographical depend upon the triangulation and upon the astronomical positions so determined. The survey also includes the determination of the magnetic elements; sometimes in the determination of gravity by pendulum observations. In addition to these and other regular duties of the survey, the officers are often called upon for assistance by other departments of the Government, and by various States of the Union for special surveys, the location of lighthouses and navy yards and docks, and in a case of States, frequently for the demarkation of boundaries between them.

Q. How are these surveys made by this department of the Coast and Geodetic Survey?

A. I do not know that I fully understand just what counsel wants me to answer.

Q. I mean the practical operation of it; how do you make that?

A. I started in to say, it would be a long story to tell just how we do it, because there is a great deal of work to it.

Q. I do not mean for you to go into detail, but, do you send a man, assistant or—

A. You want to get the administrative features of it?

Q. Yes?

A. When a piece of work is to be done, the superintendent, in the first place, decides in his own mind as to what work was to be done, and then he selects the most available man to do the work, and then he issues his orders for the work to be taken up at such time and under such conditions. A specified allotment of funds is made to cover expenses of the work. The officer in question then proceeds to the field and takes up the operation; employing such persons for his assistants as he may find necessary.

By Mr. FLOWERS:

536 Q. When was this line indicated on the sketches prepared by you indicating the deep water channel out of the mouth of Lake Borgne to the gulf of Mexico, surveyed and marked or buoyed?

A. So far as my knowledge extends it never has been surveyed or marked.

Q. Well, upon what information then, did you determine this line as indicated on your sketches?

A. I think it is explained in the report itself, and I believe I stated already that this report was rather an informal matter. It was prepared with no idea of being submitted in court, and purely for the information of Mr. McLain, for the benefit of one of his constituents, and is by no means, perhaps, I may say, as thorough or as precise as might have been the case if I had had any idea it would be used in any subsequent proceedings; but as far as that particular line you refer to goes, that merely expresses my own view as given to Mr. McLain of what might possibly or probably be held to be the line between the States. It is merely an expression of opinion on my part.

Q. What does this line indicate, marked deep water sailing line, on sketch No. 3?

A. It indicates approximately the channel usually employed for purposes of navigating those waters.

Q. That line has never been marked by any representative of your department?

A. Not as far as I know. The only marking on it is the marking by buoys placed there by the lighthouse department.

Q. Do you know when that was done?

A. I cannot say as to that; the buoys are changed frequently from time to time, according to the views of the inspector.

Q. The marking of that line had no reference whatever to any boundary line?

A. Absolutely none.

Q. It was just for purposes of navigation as shown on the chart?

A. Yes sir, purely for purposes of navigation as shown on the chart.

By Mr. WILLIAMS :

Q. Then as I understand you, your Exhibit No. 11, which is, as I understand it, your report to Mr. McLain, in writing, with certain blue prints attached thereto, was made by you upon his request, from such information as you were able to obtain in the different libraries in the city of Washington?

A. Yes sir; from the different libraries and other sources of information. And as I have already stated, the maps attached are not intended to be exact; they are merely illustrative.

At this stage of the proceedings, the hearing was adjourned by the commissioner, for recess, to be resumed at the hour of 2.15 p. m. at the same place and date.

Resumption of Proceedings.

Pursuant to adjournment for recess, the hearing was resumed by the commissioner at the hour of 2.15 p. m. at the same place and date, all parties being present.

537 Cross-examination of W. C. HODGKINS resumed.

By Mr. FLOWERS :

Q. In drawing the green line on exhibit marked Mississippi B, as indicating your idea of the political coast line of the State of Louisiana, you assume that the islands south of that line and east of the red line, drawn by you, as indicating the physical coast line of said State, are the property of Louisiana, do you not?

A. Before answering the question I should say that the red line referred to by counsel for Mississippi, is a line drawn between points indicated by him. With that proviso I should answer yes.

Q. Please answer the question directly as to whether in drawing this green line, you assumed that the territory south of that line and east of the red line indicated, is part of the State of Louisiana?

A. Yes sir, I assume so.

Q. It is a fact, is it not, that in drawing the red line mentioned to indicate the physical coast line from Malheureux point to the north-west point of Point Chico, was drawn at the request of counsel for Mississippi and in that question they simply requested that you draw a line to indicate your idea of the physical coast line between those two points?

A. I think that is correct, with the exception, as I stated at the time, it is based on this particular map and the scale of the map, my own knowledge of the circumstances being absolutely nil.

By Mr. WILLIAMS:

Q. It is a fact that you simply answered the question propounded by counsel for the State of Mississippi?

A. Yes sir.

Q. To indicate the physical coast line between those points, your opinion?

A. My opinion as shown on this map.

By Mr. FLOWERS:

Q. On the sketch made by you appended to your report, made to the head of your department, at the request of Mr. McLain, sketch No. 3, you indicate a route from the mouth of Lake Borgne to a point southeast of the most northern point of Isle à l'Étre. Please tell us what that line is?

A. That line is designated on the sketch itself as the deep water sailing line from Pearl river to the gulf of Mexico.

Q. That is simply a sailing line you say?

A. Deep water sailing line representing the usual and practicable route of navigation.

Q. That does not mean that this is the only practicable sailing line between these points, does it?

A. That would depend altogether on the draft of the vessel in question.

Q. Does it mean that this is the only practicable sailing route for all vessels of a deep draft?

538 A. In part. It is the most practicable route all things considered for a vessel of draft suitable to cross the bar east of the Malheureux islands.

Q. Is that the only deep channel route?

A. It is in the western portion; in the eastern portion near Cat Island channel there might be a variation made; that is shore more distinctly on this compound map of the same scale, where the channels are indicated.

Q. What map is that?

A. Map No. 17.

Q. When you stated in your examination in chief, that if you were marking the boundary line across this territory, between these two States, you would follow the deep water channel, did you mean to say you would follow the line indicated on sketch No. 3?

A. Not necessarily. That might be a matter of agreement between the States for the sake of simplifying the direction of the line.

Q. It is your understanding that States can agree to anything, is it not?

A. You are referring now to the States of the United States?

Q. Yes?

A. I understand that the States can agree provided their action is sanctioned by Congress.

Q. Is it your understanding, from your information and knowledge of international law, that the States could not agree unless it was sanctioned by Congress?

A. I do not think international law would apply in that respect, but I understand it is held under the Constitution that the consent of Congress is necessary in order for a State to alienate any portion of its territory.

Q. It is your idea that under the Constitution of the United States that two States could not establish the line by agreement without the sanction of Congress?

A. In case of material variation from pre-existing established boundaries I suppose it would be advisable to secure the consent of Congress.

Q. I understood you to say, on your cross examination heretofore, that if you were measuring off the three leagues provided in the Louisiana act as bounding the State of Louisiana, you would measure from what you consider the political coast line. That is correct is it not?

A. It is correct in so far as relates to the starting line, the political coast line. It is not correct in assuming that if I were running out a boundary line I should lay it always three leagues from that coast line.

Q. If the act of Congress under which you were proceeding had a provision of that kind in it, you would follow the act would you not?

A. Presumably if it were merely an executive act; if I had absolute power to construe the act I should hold that Congress had no power to confer jurisdiction on the high seas beyond three miles from shore.

Q. You would hold the act of Congress in such case as being unconstitutional?

A. I should hardly say unconstitutional; but there is a legal phrase *ultra vires* which seems applicable.

Q. Will you please state whether the three league line drawn with reference to the political coast line which you have defined on map marked Mississippi B, would coincide with the deep channel line indicated by you on your sketch No. 3?

539 A. Undoubtedly not.

Q. Can you tell us how it would run with reference to that line?

A. Approximately, if that would be sufficient, more exactly by measurement. That is shown on this very map Mississippi B where the lines parallel to the coast of Louisiana are represented by blue lines passing through the waters of Mississippi sound, the line marked nine nautical miles from Grand pass etc. in combination with the line marked nine nautical miles from Isle au Pitre, would form the line parallel to the political coast of Louisiana, while the black line marked deep water sailing line from Pearl river to gulf of Mexico indicates approximately the deep water channel.

hardly seem to come (to my mind at least) within the meaning of the act creating the State of Mississippi with reference to islands.

Q. That is not an answer to the question. Now, forgetting the fact that there is a controversy between the States of Louisiana and Mississippi; if you were given the act creating the State of Mississippi and defining its boundary lines, and you were sent to mark off the southern boundary line in the waters of the gulf of Mexico, how far would you mark it, would you mark it so as to include all islands within six leagues of what you regarded, in your judgment, as the southern shore of the State of Mississippi?

A. It is the same thing in another form.

Q. Remember, forgetting the fact that there is any controversy between the two States and you were given the act creating the State of Mississippi and you were sent to mark the southern boundary of the State of Mississippi and you are the sole judge —

A. You ignore the existence of Louisiana in this matter?

Q. Forgetting that there is any controversy between the two States about it. If you were sent, if you were furnished with the act creating the State of Mississippi and sent to mark this
529 line, how would you do it. Just explain that point?

A. I do not really think that is a question that ought to be asked me because it is an impossible supposition.

Q. What is your opinion about this, that is what we want.

A. I am not prepared to answer that, because it would be a question requiring deep study to find the equity of the case.

Q. Would you include all islands within six leagues of the shore. Take this act, it says including all islands within six leagues of the shore, taking this act and you were sent to mark the southern boundary line of the State of Mississippi, would you *not* include all islands within six leagues of the shore, or would you not?

A. I would be in serious doubt. It is not a question, as I say that can be answered off hand, for a great many considerations would enter in there. It would be necessary to decide what were meant by islands and what were not. It is a question of course, that properly ought to be considered by a court. I am perfectly willing to grant that according to the letter of the act, Mississippi would seem to have a claim to such islands, but on the other hand my own interpretation would be that islands that were closely jammed up against others and practically form one mass of marsh, were not really intended as islands in the intention of the Government. It seems to me that that refers to detached islands, that are physically so.

Q. We are not now trying to ascertain whether this territory in controversy consists partly of islands or not. But the question is, would you include, if you were sent, under this act creating the State of Mississippi, to mark the southern boundary line of that State, would you include all islands within six leagues of the shore. Then the question will come up whether these were islands or not?

A. I would be in serious doubt about that. I do not think I

ould be inclined to include everything that might absolutely be called an island.

Q. Under this act?

A. Yes sir; it is a question of construction. Of course I am willing to say there might be possibly a few more, but I would be very much in doubt whether everything that can be called an island, that every piece of marsh separated by a slough from another piece of marsh constituted an island within the meaning of the act.

Q. My question is this. I want to get your answer to this one question. That if you were sent, under this act saying that all islands within six leagues of the shore should belong to Mississippi, and you were sent there with this act and this act alone, now, regardless of sloughs, marshes or anything else, to mark that line, would you or would you not, when you established the line, include every island within six leagues of the shore?

A. I do not think I could answer that question without having the actual case on the ground, I would have to go there and see what the country looked like.

Q. I do not believe we exactly understand each other about that. I do not think you understand me. Just taking it, now, for granted, that is, regardless of what might be an island or what might be a piece of marsh, or what might be anything else, if you were sent with this act and this act alone, before you, regardless of any controversy that might exist between the State of Mississippi and the State of Louisiana, and directed to mark the line following this particular act, with full authority to fix it by the act, and construing the act yourself without reference to any other act of Congress or any State, would you include all islands within six leagues of what you thought to be the southern shore of the State of Mississippi?

A. Well, I think perhaps I can answer it in this way, by saying that I would include everything that I thought was an island.

Q. I do not mean to commit you in your testimony as trying to define what an island is, or what a marsh is, or what a deep water channel is; but if you had the act creating the State of Mississippi and that act alone, and you were sent with that act, regardless of everything else, would you not include every island within six leagues of the southern shore of Mississippi?

A. All I can say in regard to that is to repeat my answer, that I should include everything that I considered an island.

By Mr. FLOWERS:

Q. The only question would be what are islands?

A. Certainly.

Q. If you found anything there that you considered an island you would include it?

A. Yes, sir, but if the whole thing was left to my own judgment should construe what I thought was an island.

By Mr. WILLIAMS:

Q. It would be absolutely within your own judgment as to what an island was. You might say this is an island and it might not be an island when it came to a judicial decision of it. You might say that was a piece of marsh and the court might say it was an island. But if you went to establish the line you would put everything within six leagues of the shore what you regarded an island, would you not?

A. Yes sir, under those suppositions.

By Mr. FLOWERS:

Q. In doing that you would not consider the deep water channel, would you?

A. Not under this suppos-titious case.

Q. That would not enable you to determine what piece of land might be an island and what piece might be a marsh?

A. The deep water channel would not enter in that determination, certainly not.

By Mr. WILLIAMS:

Q. That is upon the supposition we have already put?

A. That is on the supposition that it is entirely a new case.

By Mr. FLOWERS:

Q. Then, looking at the act creating the State of Mississippi, there is no uncertainty or indefiniteness in it as to all islands within six leagues of the southern coast of Mississippi is there?

A. I think my previous answers indicate there would be a great deal of uncertainty.

531 Q. That uncertainty would arise from the difficulty of determining what land is an island and what is not an island, would it not?

A. Partly that and partly the matter already alluded to, the possibility of certain islands being crossed by the boundary line.

Q. If there was no uncertainty or discrimination as to what are islands in these waters, there would be no indefiniteness or uncertainty in this act creating the State of Mississippi would there?

A. Not under the hypothetical case which you put.

Q. The act of Congress creating the State of Mississippi is definite, in that, standing alone it embraces within the territory of Mississippi all islands within six leagues of the shore; it is definite that far, is it not, standing alone?

A. It is a definite statement, certainly.

Q. Then the uncertainty in the interpretation of this act, in your opinion, arises only when you undertake to reconcile it with the act creating the State of Louisiana?

A. Yes sir. I think that might fairly be conceded with the qualification already stated.

Q. Will you please indicate on map No. 7, in ink, what you consider the physical coast line as testified about by you in your examination in chief, of the State of Louisiana?

A. In order to do that I should have to follow the shore line all along, it is so irregular it would be impossible to identify it by straight marks. I would suggest that it might be put on another copy of this map if it would suit counsel equally as well.

Q. Read the question please. (Question read.)

A. Mr. Flowers how far do you want that designation to extend, between what points?

Q. From the mouth of Lake Borgne to the gulf of Mexico.

A. I would ask counsel to fix the points a little more definitely because it would be almost impossible for me to determine just the limits you want.

Q. I will say that one purpose of the question is to have the witness to indicate on this map at what point the main physical coast line enters the gulf of Mexico?

A. That is a job for me.

Q. I will ask you to mark this line as far south as the projection northwest of Point Chico?

A. I take it you want the line to begin at the point commonly called Malheureux point?

Q. Yes.

A. I would like to say to counsel that this marking will be dependent on the scale of this map, as I have no personal knowledge of the locality in question. As requested by counsel for the State of Mississippi I have indicated on a copy of map No. 7, by a red line from the point marked B on the shore of Lake Borgne to the point marked C northwest of Point Chico, what appears to be the physical coast line on this portion—

By Mr. WILLIAMS:

Q. Is it the physical coast line or shore line?

A. Either one. I think you said physical coast in the question; it is the physical coast line of this portion of Louisiana.

532 By Mr. FLOWERS:

Q. Please indicate on this same map what you consider the political coast line as testified about by you in your examination in chief, between Malheureux point and the most northeastern projection of Isle à Pitre?

A. In order to avoid confusion of lines would colored chalk be permissible in this marking?

By Judge GUION:

Q. We will give you another map.

By Mr. FLOWERS:

Q. I think this would overlap a little bit there—I leave that to you, just anything to indicate it, use another pencil.

A. In compliance with the request of counsel for the State of Mississippi, I have marked in green chalk the line specified from Malheureux point marked B to the northeastern extremity of the Isle à Pitre marked D, on copy of map No. 7.

Q. In construing the act creating the State of Louisiana, and in determining what islands belong to the State of Louisiana, under that act, from which of these lines marked by you would you measure?

A. This is my personal opinion.

Q. Yes?

A. I would measure from the green lines as the political coast line.

Q. Will you please define political coast line as used by you in this examination?

A. By the political coast line, I understand a line which is superposed, as one might say, upon the natural or physical coast line of a continent, to include all those outlying portions of territory and the included territorial waters which come under the local jurisdiction.

Q. Please state, upon examination of this copy of map No. 7 before you, the maximum distance from this political coast line as defined by you on this map, to the line on the same map indicating the deep water channel?

A. The maximum distance between the two lines mentioned, scaled from this map, seems to be about $8\frac{1}{2}$ statute miles or $7\frac{4}{10}$ nautical miles.

Mr. FLOWERS: For purposes of identification counsel for the State of Mississippi offer in evidence as an exhibit to the testimony of this witness on cross examination, United States Coast and Geodetic chart No. 19, marked Mississippi B.

Q. Mr. Hodgkins, what was the authoritative survey of this territory in question.

A. What part of the territory does counsel refer to?

Q. I mean this southern coast of Mississippi and the eastern coast of Louisiana?

A. As far as I am aware of, the first surveys by authority of this Government, were those of the General Land Office.

533 Q. When was the first topographical survey of this territory made by the official authorities of the Government?

A. Aside from the surveys of the Land Office already referred to, the only surveys of which I have knowledge, are those of the Coast and Geodetic survey which were made in this region, of the Malheureux islands, at any rate, in the year 1852.

Q. When was the survey by the United States Land Office you mentioned made?

A. The survey of the southwestern portion of Mississippi was apparently made about 1827, and the survey of the territory commonly called Louisiana coast on the south side of Lake Borgne and Mississippi sound was made in the neighborhood of 1845 or thereabouts.

Q. In the surveys made by the United States Land Office, is anything done more than to divide the territory up into townships and ranges, with reference to certain established base lines?

A. Yes sir; the surveyors are supposed to furnish an accurate plat of the country surveyed showing the outlines of lakes, streams bays etc.

Q. Was that done by the survey made under the authority of the United States Land Office in 1827?

A. Such plats were furnished.

Q. By the officers making that survey?

A. By the surveyors.

Q. How do you know that; have you seen those plats?

A. That appears on what is called plat books of the General Land Office.

By Mr. WILLIAMS:

Q. In other words, your testimony is, that you know this from the records that you have seen, books and plats, in the General Land Office?

A. Yes sir.

Q. Personally you know nothing about it?

A. Of course not.

By Mr. FLOWERS:

Q. Is it a fact that since that survey, the maps made are uniformly approximate?

A. What maps do you refer to?

Q. All maps made of this territory?

A. Oh, no, I should hardly say all maps are uniform, they vary very much.

Q. When you made your investigation at the instance of Mr. McLain the result of which appears in this report offered in evidence, did you make an investigation with that end in view, especially, to find the earliest maps and surveys of this territory?

A. I did not attempt to go back of the period of the cession of Louisiana from France to the United States.

Q. You had the benefit of all such information, however, as could at that time be found in the Congressional library at Washington, and of the United States Land Office?

A. Of all that I thought necessary for the purpose.

By Mr. WILLIAMS:

Q. You said in your examination in chief that you were assistant to the Superintendent of the Coast and Geodetic

cate the southern boundary line of the State of Mississippi without any attempt to reconcile them with the Louisiana lines?

A. I have already just stated that I do not think any such line could hold in open waters of the Gulf. They might represent the boundary line across the island district, but when you get into the open waters of the Gulf I cannot conceive the possibility of the State having jurisdiction of such a distance from the shore.

Q. Do those lines as drawn embrace all islands within 18 miles of the Mississippi shore?

A. Presumably they do, within the limits within which they are drawn.

Q. Is there any island in those waters within 18 miles of
527 the Mississippi coast, not embraced within those lines?

A. Yes sir, that is evident from the fact that the lines stop at a certain point on the map; they might be continued to the westward of course, across Lake Borgne.

Q. In drawing these lines, the western extremity represents what you consider the physical coast of the main land of Louisiana, do they not?

A. I should hardly like to say that either. This was simply an approximation of what I call in my report the main body of marsh land including some islands and could not be considered as a rigid physical coast or shore line of the main land.

Q. Mr. Hodgkins, the act of Congress creating the State of Mississippi, defines the southern boundary line of that State sufficiently for the purposes of a civil engineer or surveyor who might undertake to mark it off, if no other law was to be taken into consideration, does it not?

A. I should be somewhat in doubt about that, from the terms of the act itself. I have already explained that as far as crossing islands it would cause considerable difficulty to a civil engineer in laying out a line under such circumstances.

Q. The only difficulty you think would be met with and the only uncertainty in the act, is, that it does not fix the territory to which islands which might be crossed by the 18 mile line, would belong? Is that correct?

A. No; I do not think that is the only difficulty.

Q. Please name any other difficulties you see?

A. Another difficulty which would present itself to any engineer construing the terms of the act, in laying out a line, would be the provision that the line should extend to the eastern mouth of the Pearl river, and it would be a natural assumption in my opinion, that it would not be expected to follow a tortuous course through winding passages in an area of marsh.

Q. Is it your understanding of the rule of international law, that a boundary line between States cannot cross a deep water channel?

A. Not at all.

Q. If you were marking the line as defined by the act of Congress creating the State of Mississippi which provides that Mississippi ter-

territory shall embrace all islands within six leagues of the shore, and in marking that line you should strike the deep water channel, would you consider that you had to define that although that line might not embrace islands within the limits fixed by the act of Congress?

A. Not necessarily, I should say; but an engineer in the field has to consider all the circumstances of a case. Each case has to be considered on its own merits; one cannot lay down a hard and fast rule to cover all contingencies.

Q. I understand your idea about this case is, that if you were directed by the authorities to mark the boundary line between these two States, you would very likely follow the line indicated on the plat or sketch. I am interrogating you now about the Mississippi act alone. If you were marking the boundary of the State of Mississippi under an act which gives all islands within six leagues of the shore to the State of Mississippi and you were acting under that statute alone, simply defining the boundary as described in that act, would you not draw the line so as to embrace all islands within six leagues of the shore?

A. I have already stated that I thought that would be a source of difficulty, in interpretation. I do not think any engineer would feel authorized to decide for himself. He would probably feel obliged to refer it to some court for decision as to the proper construction of the act.

By Mr. WILLIAMS:

Q. Here is the point. If you were called upon to take the act and the act alone creating the State of Mississippi, and define its boundaries, would you mark the line so as to include all islands within six leagues of the shore, taking into consideration your understanding as to what the shore was?

A. That would depend, of course, as I stated before, a great deal on circumstances. A man who has absolute power in a matter can do one thing, whereas if he is only delegated he might do another thing.

Q. But the point is this. If you were given the act and delegated by the authorities to go and mark that line, how would you do it?

A. You mean with absolute authority to fix it and mark it?

Q. It is your opinion we are after about that. Here is the act—

A. Precisely.

Q. We furnish you with that and you are directed to go and fix that line, how would you do it?

A. I hardly think that is a fair question because that is putting me in a judicial position which of course an executive officer cannot occupy; but I think it would be a question difficult of interpretation in that case as to what was really meant by islands. It does not really seem to me that the act means to include such areas of marsh as lie on the western side of Cat Island channel. It might possibly be construed to include Isle à Pitre, but the other islands form, so closely allied, an aggregation of marsh areas that they

Q. On the southeast portion of the lower end of Lake Borgne, on map No. 18, there are how many bayous in this locality under consideration, which start at Lake Borgne and run eastward?

A. You include the whole of this bight—

Q. Between Point aux Marchettes and Shell beach?

A. In that distance there are six streams sufficiently large to be worthy of notice.

Q. How many of them have names?

A. East branch of Bayou St. Malo and Grand bayou.

Q. Do I understand, then, there are only two of them big enough to have names?

A. Only two of them have names on this map and the others are relatively small.

Q. How many bayous are there in that same area of Lake Borgne, as shown on map No. 19?

A. Two.

Q. Do I understand you to say, therefore, that if you were called upon to project the physical coast line as shown on map No. 19, that you would do so by projecting it through Bayou Guillemard, and if you were called upon to project it on map No. 18 you would not make the bayou there corresponding to Bayou Guillemard but would extend it eastward to Nine Mile bayou?

A. No, I do not think that is quite a correct statement of my understanding so far as this map No. 19 is concerned. I think the passage marked Bayou Guillemard is sufficiently important to consider as separating in a strict sense the outlying portions from the mainland of Louisiana, and similarly on this map marked No. 18 in taking the strict definition of physical coast line I have already stated I think the line would be drawn through Bayou La Loutre.

Q. And not through Nine Mile bayou?

A. That line drawn through Nine Mile bayou was drawn in pursuance of a request for a line between Malheureux point and the point northwest of Point Chico.

Q. Was, or was not, the line between Malheureux point and the point northwest of Point Chico, your definition of the physical coast line of the eastern end of the parish of Saint Bernard?

A. No; that was not my definition of it. It was my understanding, from the map in question, of the physical coast between two specified points only, not as applied to the general question.

Q. Will you now please look at the map No. 19 and state what you recognize to be the political coast line on map No. 19?

A. In what sense, please?

Q. In the sense concerning which we have just had our discussion. Would you indicate it, say from the southern end of Lake Borgne eastward, by drawing a red line along there?

A. You want my opinion?

546 Q. Yes?

A. Witness draws line.

Q. Will you please locate both ends of that line?

A. I have marked the line requested and lettered it A at the western end and B at the eastern end.

Q. And you made the line in red ink?

A. Yes sir.

Q. Will you please refer to map Mississippi B and state from what point or points of the line, you would project the nine mile line if you were given the act of Congress creating the State of Louisiana and were called upon to project a nine mile line from the Louisiana coast line?

A. Construing the act myself?

Q. Yes?

A. I should draw that line parallel to what I call the political coast line.

Q. Will you designate it by color and by the letters that are attached to it on the map?

A. As shown, in part, on this map, it is drawn in green chalk marked B in red ink at the western end and D in red ink at the eastern end.

Q. Referring back again to this report made by you to Mr. Tittmann at the request of Mr. McLain of Mississippi, was there anything that you could have done which would have made the report more complete for the purpose for which it was intended?

A. I do not think there is, for the purpose for which, at that time, I thought it was intended. I could have made the sketches, perhaps more carefully and exactly, if I had had any idea they would be subsequently used in court. They were intended as illustrations for Mr. McLain's information and not exact statements of facts. They are approximate rather than exact.

Q. Would that affect the general worth of the report as made?

A. That would be a matter of opinion. I should not think so myself, as the sketches are merely illustrations of the report.

By Mr. ZACHARIE:

Q. On your cross examination, you have spoken of the gulf of Mexico in tracing lines. By that, did you, or not, mean the open gulf of Mexico?

A. Yes sir, I mean the open Gulf outside of the coast line.

Q. What relation did the gulf of Mexico have to this portion of water lying between the north coast of this disputed section and the Mississippi coast; what would you call that?

A. In name or description?

Q. In description?

A. I should call it an arm of the sea.

Q. Would it be an arm of the gulf of Mexico?

A. Undoubtedly I should say.

Q. You mentioned in your examination in chief, and I believe also in your cross examination, that a part of the fixing of the boundary between Maryland and Virginia, namely in regard to that

portion known as Pocomoke sound and river, that the theory of the deep channel was adopted as being the boundary line?

A. I think in that case that the centre line was taken, the mid channel.

547 Q. Do you know of any other case in which the deep channel theory has been adopted and the case decided?

A. The most noteworthy case that comes to my mind is that of the international dispute between Great Britain and the United States in regard to the boundary line extending through the gulf of Georgia and the strait of Juan de Fuca and the Pacific ocean.

Q. And in that case, am I right in saying that they fixed the boundary line as the line of the deepest channel?

A. The case was referred to Emperor William of Germany as an arbitrator and he decided in favor of the United States, that the extreme western channel of the three possible routes, was the proper channel, and my understanding of the case is, that that was decided, on the principal of what is called Thalweg, that is, the deepest and most suitable channel for purposes of navigation.

Q. The word Thalweg is generally known, is it not, in adjusting water boundaries?

A. I think it is.

Q. What does it mean, and what is it derived from?

A. Literally it means the way of the valley or valley path. It is used to signify the deepest passage through a body of water intervening between two conterminous States.

Q. Do these Coast and Geodetic surveys show, in the waters of this disputed territory, a buoyed channel?

A. They do.

Q. Is there more than one channel so buoyed, on these maps, between the north shore of the disputed territory and the Mississippi coast?

Mr. WILLIAMS: Counsel for the State of Mississippi here interposes the same old objection to all these leading questions and to all matters of opinion about which the witness is testifying and concerning which he has not qualified as an expert.

A. Do I understand you to mean a channel running north and south?

Q. No sir, a channel running east and west?

A. On this map No. 17 two channels are indicated eastward from the deep water in Grand Island pass near Lake Borgne light; one leading to the gulf of Mexico through Cat Island channel; the other leading to the northward and then to the eastward into the waters of the Mississippi sound, for the purposes of local navigation inside.

Q. Do both of these channels pass north of Grassy island and Half Moon island?

A. They do.

Q. Are there any other channels buoyed by the Government?

A. None appear on this map.

Q. Do you know how long, from the inspection of the charts of your bureau, that these channels have been so marked as buoyed, if not exactly about how long?

A. I cannot say how long the Lighthouse Board has maintained buoys in those waters; but the channels are identical with those found at the time of the survey about 1850.

548 Q. Now, Mr. Hodgkins, I find in your report, in speaking of these islands to the north of this peninsula or archipelago, "all the above islands would be included within Louisiana's three league 1812 line and within Mississippi's 6 league limit of 1817." If you were to follow the literal words of the two grants to the States without reference to any legal principles, would there not be an overlapping?

A. Evidently.

Q. That is to say, that the two States would be claiming the same territory?

A. That appears to be the state of the case at present, I believe.

Mr. WILLIAMS: Counsel for the State of Mississippi object to the testimony as being an opinion of the witness.

Recross-examination.

By Mr. FLOWERS:

Q. In your re-direct examination, with the B. Lafon original map before you, a copy of which is referred to as map No. 19, at what point along what course did you say you would mark, if called upon to do so, on this original map, the physical coast line of the main land of Louisiana?

A. On this map I stated that I should be inclined to draw it through the passage called Bayou Guillemard.

Q. That line would not be the same as that indicated by you in red ink on the map referred to as No. 19, would it?

A. Not at all.

Q. Map No. 19 purports to be a copy of this original does it not?

A. So it appears.

Q. And it is the same map made on a smaller scale, is it not?

A. It is a photographic copy.

Q. Then would your location of the physical coast line vary with the size of the map on which you were making it?

A. Not at all.

Q. What is the bayou along which you say you would mark the physical coast line on the original map?

A. It is marked here Bayou Guillemard.

Q. Does that bayou appear on the copy referred to as map No. 19?

A. It does.

Q. Why would you mark the physical coast line along that bayou on the original but would not mark it there on the copy?

A. I did not understand that it was desired that I should mark on the copy.

Q. Please indicate in red ink, on map No. 19, what your idea is, the physical coast line as shown by that map?

A. I have marked the line requested by counsel, with a series of dots marked at the northern end C and at the southern end D, on map No. 19.

Q. You say you have been called upon in a good many boundary controversies to survey or establish lines?

A. Yes, sir, I have had occasion to perform such duties.

Q. And your decision, you say, has, in nearly every instance, been accepted?

A. I should not put it just that way. The decision in such cases was not always left to me, that is, I was not always an arbitrator or commissioner; I have been an engineer to carry out the instructions of commissioners; but so far as I have had any connection with boundary surveys, the results have been accepted.

Q. You had already, before you began to testify in this case, decided this question involved here, as far as you were able to do it with the facts available?

A. My conclusions are embodied in my report, which is in evidence, made three years ago, at the time the matter was brought to my attention.

Q. As far as you were able to gather the facts and make up your own mind about it; you did that two or three years ago did you not?

A. Yes sir; the matter in question was given to me three years ago. I made my report and the matter dropped from my mind then, and I had no further occasion to look into it until the other day when I was summoned to come down here and testify in the matter.

Q. You were summoned here at the instance of Louisiana, of course?

A. I presume so; I got a subpoena from Mr. Mortimer commanding my attendance here.

By Mr. WILLIAMS:

Q. In most of the cases in which you have been interested, relative to boundary lines between different States, it has been in the capacity of an engineer to mark the lines, has it not?

A. In the majority of cases, yes.

By Mr. DYMOND:

Q. You have, as I understand it, fixed on this map No. 19, between the points C and D a dotted red ink line which you state was, according to that map, in your opinion, the physical coast line of Louisiana. Was I correct, or, was I not correct, in understanding that you reached that conclusion because of the large size of Bayou Guillemard as given on the original map No. 19.

A. Yes sir, substantially so. It seemed to me, as shown on that map, that that passage was so apparently large and important that it could not be passed over as a mere brook or ditch in the marshes. I do not wish to be understood, though, as saying that I consider that that is necessarily the only interpretation of the phrase, physical coast. It is a matter largely of opinion in such cases as that, whether a stream is wide enough or not wide enough to constitute a real division. In a case of very narrow, tortuous intersecting creeks, through a marsh, I, personally, should be disposed to exclude them and consider such a marsh as practically continuous; but where a passage of such width and reasonably direct, exists, my own opinion is, that such passage, in the strictest sense of the term would constitute a physical coast line.

550 Q. Do you recognize any similar bayou on map Mississippi B, or map No. 18 of Louisiana, similar to Bayou Guillemard?

A. There is one that seems similar to it, at its Lake Borgne end.

Q. How do the bayous on map Mississippi B and map No. 18 of Louisiana, compare as to size, with the bayou on map No. 19?

A. The bayou on map No. 18 marked East Branch Bayou St. Malo, is a great deal smaller considering the scale, than Bayou Guillemard as shown on map No. 19.

Q. Is there, on map Mississippi B, any bayou which would correspond to Bayou Guillemard?

A. A bayou is shown which corresponds to some extent, not very closely, but which may very possibly represent the same bayou.

Q. How does it compare as to size, considering the difference in scale?

A. The scale on this map marked Mississippi B is so small, that it is impossible to tell anything accurately about the width of those bayous; they are represented, practically, as mere lines, and it is mere guess work to try to say how wide they are.

By Mr. WILLIAMS:

Q. Is map Mississippi B the same map, or an exact copy of map No. 7?

A. The two are identical so far as the maps themselves are concerned.

By Judge GUION:

Q. How wide, if you know, is what is called Nine Mile bayou?

A. I can measure it off the large scale map as it was in 1852 or thereabouts.

Q. All right.

A. At its entrance from Lake Borgne, Nine Mile bayou is here given as just about a quarter of a mile wide, but a little further south, about $\frac{1}{2}$ of a mile or a mile south of the entrance, it narrows to an eighth of a mile and the width varies slightly from there, the average width being $\frac{1}{2}$ of a mile, according to this map.

Q. Is that the present width?

A. I cannot say as to that; I know nothing about the present width.

Q. At what time did the bayou have the width you are referring to?

A. At the time of the topographical survey in 1852 or thereabouts.

Q. Is there anything that shows what its width was prior to 1852?

A. There is no record of that.

Q. There is no record of that in the office of the Coast and Geodetic Survey?

A. There are no records except those on which map is based.

Q. Are there any islands within 18 miles of the Mississippi shore between the Mississippi shore line and what you call the political coast line between Malheureux point and Isle à Pitre; and, if not now, were there any in existence in 1817?

A. The map shows certain small islets marked shell banks, the extent of which I do not know. As to the existence of any island in 1817 I have no information. The Malheureux islands, already alluded to, of course existed in the entrance of Lake Borgne. Saint Joseph island on the Mississippi shore has been washed away I understand. On some of the earlier maps there was an island shown up in this region somewhere (witness points to the western part of Mississippi sound); but I have no authentic information in regard to it, I don't know anything about it.

Q. Are there any islands, or were there any islands in 1817, within 18 miles of the Mississippi shore west of the eastern extremity of Isle à Pitre?

A. You are speaking, now, of the mere physical fact?

Yes.

Q. In 1817 you say?

Q. 1817 or now?

A. I have no accurate information as to what existed in 1817, but at the time of the survey of 1852, a number of islands are shown.

Q. Could you name them?

A. The principal one is designated here as Isle à Pitre.

Q. I am speaking now, east of Isle à Pitre.

A. I beg your pardon, I thought you said west of Isle à Pitre.

Q. I meant to say east?

A. East of Isle à Pitre there were a series of islands known as Cat island, Ship island, Horn island, etc.

Q. Give them all if you can?

A. Between Isle à Pitre and Mobile bay?

Q. And the line between Alabama and Mississippi, within 18 miles from the Mississippi shore.

A. — I am not mistaken that line strikes Petite Bois island. Taking them in order, from the westward, Cat island, Ship island, a small sand island not named, east of Ship island, Horn island, Petite Bois island, all of which lie well off the shore; there are also several

Mississippi B is drawn across the western portion of an island marked Martin island, then across a small islet, then across a larger island lying between Live Oak bay and Fox bay, crossing a narrow bayou, it passes over the island lying immediately westward, crosses

541 two small islands in what is marked Drum bay, crosses the south western end of an island lying in between Drum bay and Southwest pass, and crosses a small island situated west of the southwest end of Southwest pass, and then proceeds into the marshes beyond, which although more closely connected are still intersected by narrow bayous so that they might in a very strict sense of the term, still be considered islands.

Q. Will you now state what bodies of land the red line representing 18 miles statute miles from the Mississippi coast, crosses?

A. This line, as drawn on this map, crosses two points on the island stretching southwest from Door point, crosses the islands on both sides of Deep pass, crosses an island lying north of Southwest pass and west of Elephant pass, crosses along a narrow island northwest of Southwest pass, crosses an island between Indian Mound bay and Treasure bay, crosses two islands between Treasure bay and Lake Eugenie, and, if continued, would extend into the Louisiana marshes to the westward.

Q. When you speak of crossing islands, so far as those two red lines are concerned, do you mean that there would be parts of these islands north and parts of these islands south of the red lines?

A. As drawn on this map, there would be.

Q. Do either one of those projected lines pretend to follow any channel through that area?

A. I see no indication.

Q. Will you please look at this map marked Exhibit A offered by Mississippi and note the red line extending east and west across the southern portion of the map, and state whether that red line crosses any bodies of land and bisects any bodies of land?

A. As drawn on this map it does.

Q. Will you please state what bodies of land it crosses?

A. Beginning at the southwestern angle?

Q. Yes?

A. Starting from the southwestern angle of the red line mentioned and proceeding eastward, the line crosses two islands lying north of the Lake of the Mound, an island lying to the westward of Southwest pass and southwest of Cat Fish pass, two islands lying between Southwest pass and Drum bay, an island lying between Southwest pass and Fox bay, and again crosses, in two different places, the island before the one last mentioned.

Q. If that line was taken as the southern boundary of the State of Mississippi, the line concerning which you have just been testifying, would there be islands along that line part of which would be lying in Louisiana and part of which would be lying in Mississippi?

A. Undoubtedly.

Q. Does this red line on map Exhibit A of Mississippi, indicate in

any way, that it pretends to follow a channel as it extends eastwardly from its southwestern corner?

A. The only indication that I see, is a legend reading "Mississippi line." I see no indication of any channel.

Q. If you will notice the line which appears as the southern boundary line on Mississippi's Exhibit A, and notice the red ink line which appears on Mississippi Exhibit B, and compare them with the 18 mile line appearing on your sketch No. 2 attached to Document No. 11, will you state whether you recognize any similarity in those lines. I refer now for comparison taking map Mississippi's

Exhibit A as one map, and map Mississippi's Exhibit B and 542 your sketch No. 2 as another, for comparison?

A. There appears to be a certain resemblance between the line marked on Mississippi's Exhibit A as the boundary of the State of Mississippi and the line marked 18 nautical miles from the coast of Mississippi on map marked Mississippi B. This is not an exact likeness, but there is a certain similarity.

Q. Was I correct in understanding you to say on your direct examination, that you recognized the red ink lines on Mississippi Exhibit B to be, in a general way, the corresponding lines on your sketch No. 2?

A. Yes sir.

Q. I believe you measured them to see that; is that correct?

A. Yes sir, they correspond generally.

Q. Will you please look at map No. 18 and state whether there are, in your interpretation of an island, any islands west of Nine Mile bayou, as shown on the map before you, in the neighborhood of Malheureux point?

A. There are bodies of land which undoubtedly would be called islands in the strict definition of the term, but it would depend on the purpose for which I was considering them, whether I should take them as islands or not.

Q. You were interrogated on the question of the difficulty that an engineer would experience in locating a line 18 miles distant from the Mississippi shore. Will you please repeat what those difficulties would be?

A. You are alluding now to this same marsh area?

Q. Yes, I refer to the same marsh area?

A. One difficulty would be the question — deciding what should be considered islands within the meaning of the act, and another difficulty would be the question of deciding in the case of a line crossing the islands, whether said islands should be included within the territory of Mississippi or excluded from it or divided between it and adjacent territory.

Q. Would there be any other difficulty?

A. I don't know that any other occurs to me at this moment; there would, of-course, be the practical difficulties of running out such a line, but that is a mere matter of labor.

Q. You have shown on this map Exhibit Mississippi B, a red ink

line between the points B & C, the first mentioned being at Malheureux point, and the second at the point north of Point Chico. Do you consider that to be the absolute physical shore line of that portion of the State of Louisiana?

A. Not if you take the term in its strictest sense. That was the physical coast line taken from this map between the two points specified by counsel for the State of Mississippi. As I stated, I think in my examination in chief, if you carry the reasoning to its ultimate limit you have to go back to what is called on the map Otter bayou and Bayou LeLoutre, but for my own part I consider that those bayous are too narrow and tortuous to be construed, in a fair interpretation as making islands, in any proper sense, of the territory lying outside.

Q. Is your statement now, based on any knowledge of the locality other than that shown by the map Mississippi B which is before you?

A. I have no other knowledge of the locality than that obtained from this and similar maps.

Q. Have you any personal knowledge as to the conditions that existed in this locality in 1812?

A. Absolutely none.

543 Q. Have you any knowledge of any change by subsidence or storm which may have occurred in this locality since 1812?

A. I have no knowledge or information on the subject.

Q. Have you any knowledge of the storms which have occurred in this locality since 1812?

A. None at all.

Q. You spoke a moment ago of the first authoritative survey which had been made of this locality. Do I, or not, understand you to mean by authoritative survey the first survey made by this Government?

A. I think my answer specified the survey made by authority of the United States. That is what I intended.

Q. If some one else, at a prior date, had made an actual survey of that locality, or had made actual soundings of the depth of water in the locality, his records would be, would they not, entitled to as much consideration as any subsequent work?

A. That would depend on the accuracy of the man who did the work. So far as they were authenticated and corroborated they would.

Q. You were speaking of the surveys made by the officers of the United States Government in the Louisiana marshes, I believe about the year 1847—

A. I think about 1848 they began work in that region and the surveys continued several years, if my recollection serves me right.

Q. Did they also survey on the shore of Mississippi?

A. Not by the same authority.

Q. Well, but, had they previously surveyed—

A. Previously, the United States land survey, under the authority of the surveyor general of Mississippi had been extended to the southwestern part of Mississippi as early as 1827.

Q. Did those surveyors indicate the locality in which they were when they were made.

A. All of their surveys are based on the rectangular system of township, which are represented in the plat books and those plat books show the topographical features, that is to say they show the outlines of the physical features of the country.

Q. Is it the custom for those surveyors to indicate on their sketches or their survey, the locality by name, in which they are operating?

A. Only so far as it — necessary for a general understanding, I believe they have to locate each township and section by number and they are expected to give all the information they can get in regard to the country. All those surveys were made by contract; some of them were much better made than others; it depended on how much conscience a man had; how much work he would be willing to give for the money.

Q. Do those surveys indicate, in any way, a delineation of the line between Louisiana and Mississippi?

A. I can't say there was any delineation of a line. There was a delineation in a certain way, in regard to jurisdiction over certain portions of territory?

Q. What about Half Moon island?

A. Half Moon island or Grand island was included in both surveys, that from the Mississippi side and that from the Louisiana side.

Q. Included in what way?

544 A. The Mississippi plats show it as connected by two courses and distances taken from lower Point Clear and from St. Joseph island.

Q. Is it located by township, range and section lines?

A. It is not. It is not sub-divided at all so far as appears on the plat.

Q. What about the Louisiana survey of the same area?

A. The Louisiana survey included, not only Grand island, but all of the islands of the Malheureux group, and the township and section lines were laid out across all of the islands.

Q. Will you please look at this photo print which, for purposes of identification, will be called map No. 19, and will you please take a pen and ink and designate thereon, what, by this map, is shown to be the physical coast line of that section of the Louisiana marshes south of west Florida according to this map?

A. I think I will have to ask you to be a little more explicit in regard to that and tell me just what kind of a coast line you expect. Do you want to take it in its strictest sense?

A. I would like you to be guided in your interpretation by the

same influence that caused you to draw the line from the point B to the point C north of Point Chico on map Mississippi B?

A. If you remember that was a request for a line between certain definite points?

Q. We will say from a point in the southern loop of Lake Borgne to the point marked Petit Isle au Chat?

A. As shown on this map, the physical coast line would appear to pass west of that point through a passage called here Bayou Guillemard.

Q. We would that be according to the same interpretation as influenced you in projecting the line on map Mississippi B?

A. It would, using my judgment as to what would constitute a passage of that magnitude. This Bayou Guillemard, as shown on this map, appears to be a wide and considerable passage.

Q. Is it any wider than Grand bayou on map No. 18?

A. According to the relative scales of the maps, I should say it was very much wider. That, of course, is not saying there was any such passage, but merely that such a passage is shown on the map.

Q. Will you please compare map No. 18 with map No. 19, and state whether or not Grand bayou has any connection, so far as represented, with any bayou shown on map No. 19, so far as its situation locally is concerned?

A. I understand your question to mean, you want me, if possible, to identify the streams on the two maps?

Q. Yes.

A. Yes sir.

Q. All right.

A. As regards the point of exit into Lake Borgne, Grand bayou seems to resemble a bayou shown as entering at a point marked Point St. Malo on map No. 19, but, in their course into the interior the two do not seem to accord.

Q. Is there any bayou on map No. 18 which would compare at its point of entrance in Lake Borgne, with the bayou which is marked Bayou Guillemard on map 19?

A. There are two small bayous shown on map 18 which might correspond to the bayou indicated, but it would be difficult to state definitely whether either one of them was actually identical.

545 Q. Does the bayou on map No. 19, marked Bayou Guillemard, run into a bayou which would correspond with the connection between Bayou East Branch St. Malo on map No. 18, and Bayou La Loutre on the latter map?

A. It might be so interpreted, though the discrepancy between the maps is considerable.

Q. Is, or is it not, the discrepancy more of detail rather than as to the general location of the two bayous?

A. It seems to me there is a pretty radical discrepancy. There are resemblances, but I should find it difficult to identify on the recent maps the various water courses shown on this map of 1806.

Q. Will you please refer again to your sketch No. 3 attached to your report marked Document No. 11 and estimate the distance from the point northwest of the most northern point of Isle à Pitre where a bend appears in the deep water channel route indicated on said sketch, to the point on the Mississippi coast main land immediately north therefrom?

A. I should suggest, if it answers the purpose of counsel, I take it on this map because it is more accurate, but if you prefer I will take it on this.

Q. If you can estimate that same distance from any other map it is all right.

A. That distance measured by me from map No. 17 is approximately, $8\frac{3}{4}$ statute miles and $7\frac{1}{4}$ nautical miles.

Q. Will you please estimate the distance from the point on the Mississippi main land coast, to which this last measurement was made, to the most eastern mouth of Pearl river?

A. In a straight line?

Q. I will ask you to give it first as a straight line?

A. That distance from the point mentioned on the coast of Mississippi, to the beacon at the mouth of Pearl river, is, approximately $22\frac{3}{4}$ statute miles and just short of 20 nautical miles.

Redirect examination.

By Mr. DYMOND:

Q. You have been interrogated by counsel for the State of Mississippi as to the preparation of the report which you made to Superintendent Tittmann at the request of Mr. McLain member of Congress from Mississippi, and, as I understand it, you stated that you were aided in the gathering of data in the formation of that report, by the maps that you looked into, and the records of the Land Office and other sources to which you had access?

A. Yes sir.

Q. Were you aided in any way, in reaching the conclusions that you reached, by your previous experience in boundary matters?

A. I suppose that that might be a natural conclusion. My opinions, of course, are based on all the information which I have acquired.

Q. As I understand it, you personally have never visited the locality concerning which you have been testifying?

A. That is, this marsh area?

Q. Yes?

A. No sir, I have never been there.

Q. Were you ever in the territory to the westward.

540 A. I have been over a great deal of the western coast of Louisiana.

Q. Are you familiar with the general formation of that coast line over there?

A. A considerable portion of it.

Q. What you have been testifying, then, as I understand, is based upon data in possession of the Coast and Geodetic Survey as evidenced by the latest maps or charts which are issued by that bureau?

A. You refer to my report?

Q. I refer, not to your report, but to the testimony which you have given here on cross examination by counsel for the State of Mississippi?

A. Well, my testimony as to topographical and hydrographical facts in this region, is based upon information before me in the shape of maps.

Q. You have testified concerning a deep water sailing channel: Will you kindly look at the channel marked on map No. 17, C-C-C, and state whether that is the deepest sailing channel between the gulf of Mexico and the mouth of Pearl river as a continuous channel?

A. In answer to that I would say there is no such thing as a continuous channel through that area. There is a broad bar which fills the whole area of the western part of the Mississippi sound and all we can do is to select a course across that with *with* the best average depth of water; one can hardly call it a channel although it connects with a channel at each end.

Q. When you say that you speak entirely as based upon data shown by the map which is before you, namely, map No. 17?

A. Precisely.

Q. Do you know when those soundings were taken?

A. I cannot give the exact date on which the soundings in that particular area were taken; soundings began in that region in 1848 and were continued for several years, but they were completed within a period of a few years after 1848; subsequently surveys have been made in the district further south.

Q. Do you know of any recent soundings through there?

A. So far as I have been informed, no additional work in that region has been done, except in Bay Boudreaux. I would say, though in regard to this channel, that while there is not a very well defined channel through there, it is the best average course for vessels to pursue in going to the mouth of Pearl river and the only one which any vessel going to Pearl river would naturally pursue.

Q. Now, Mr. Hodgkins, will you kindly refer to map Mississippi B. concerning which you have been testifying on cross examination and state whether the red ink lines marked "18 statute miles" and "18 nautical miles" from the coast of Mississippi and running in an east and west direction, would bisect or cross any land as they progress westward into the Louisiana marshes?

A. As drawn on this map, they undoubtedly would.

Q. Can you state how frequently they cross separate bodies of land?

A. I can do that by inspection of the map. The line marked "18 nautical miles from the coast of Mississippi" on this map Mis-

Q. Have you known of instances where the instruments have blown away?

A. Yes sir, at Galveston they blew away, while they were under my personal supervision in 1900. You will find something here that would answer that. This is quoting from Doctor Enrique del Monte, member of the Havana university, who says "A continual variation in the wind velocity, that passes, in a few seconds, from a fresh breeze of 25 miles an hour, to the most violent and furious gale of 90 and 100 miles."

Q. Have you any data that would show the velocity of these recorded hurricanes concerning which you have testified, the maximum?

A. No, we have no records. We only have one instance where it passed over a station and the instruments were blown away, and I cited that in my testimony.

Q. Have you any record of a storm occurring in November 1893?

A. I find no record of a storm in November, 1893. It is not given on the charts as a hurricane and I don't find it here among the November storms.

Q. I notice, Mr. Cline, that you have cited storms in various years, but have confined your citations to the months of August, September and October. Why have you confined your citations to those months?

A. The charts show that those are the only months in which storms have passed near the mouth of the Mississippi river.

Q. Are those the months in which we generally have what you call equinoctial storms?

A. No; those are what we term West Indian hurricanes; they come into the waters of the gulf of Mexico and Atlantic ocean from June until November inclusive and they are more frequent in August, September and October.

Q. In what direction do those storms generally come?

A. Well, their direction is not always the same; they sometimes move west and sometimes move northeast and sometimes east; their tendency is northward.

Q. In these storms, is there ever any violent change of wind during the storm or during the several days of storm?

A. The wind always changes from one quarter to another during the passage of a storm, it reverses direction almost, it depends on the relation of the—that is, the position of the locality as regards the center of the storm as to the direction in which the wind shifts.

Q. But suppose the storm started from the southeast, blowing from that direction, from what direction would the wind come towards the end of the storm period, to what point of the compass would the wind shift?

A. That would depend on the location of the center of the storm. To get at that,—you will find that in the Bulletin II already cited.

Q. We just want to know in a general way.

A. It would vary with every storm.

Q. Was I correct in understanding a moment ago that, as a rule, when a storm started at one point that it ended up at the opposite point of the compass?

A. I will state that in a storm moving from west to east, there comes first easterly winds, that is, while the center of the storm is to the west of the locality in question; after the center of the storm has moved to the east of the locality in question the winds are westerly.

Q. Suppose then, you take a north and south line, would the same reasoning of results apply. Suppose the storm was coming from the southward, moving north, from what direction would you have the wind?

A. If the storm were moving towards the north the wind on the right hand side would be from an easterly direction; on the left hand side it would be from a westerly direction, blowing in towards the center of the storm.

Q. Now, suppose the storm was to the north and going southward?

A. No, we never get anything like that, hurricanes always move in a northerly direction, sometimes westerly and sometimes easterly, in the Gulf, but when they go north we find they nearly always go towards the northeast.

Q. If a storm originated in the Gulf and moved northward, after the storm had passed over a given locality, from what direction would the wind then come?

A. If the storm were moving northward?

Q. Yes, in its first stage, and had passed a given locality?

A. If moving towards due north?

Q. Yes, in what direction would the wind come so far as that given locality is concerned?

A. It would be between the southeast and southwest, from southerly point depending on the position of the center of the storm as regards locality.

Q. As an illustration, let us suppose a storm came up from the Gulf into Mississippi sound from the southeast. After the storm had passed on, from what direction would the wind come?

A. The wind would come from a southerly direction with the storm moving from the south towards the north.

Q. When would it shift around?

A. That would depend on the position of the storm center. Now if the storm center were to pass up to the east, the wind would shift around to the west; if the center were to pass up to the west the wind would shift around to the east.

Q. Mr. Cline, the area in dispute between Louisiana and Mississippi as to ownership in this case, is that area south of Mississippi and in the northeastern portion of the southern part of Louisiana.

559 Would this locality be in the path of the storms concerning which you have just testified and the storms which affect the mouth of the Mississippi river?

A. Now, the storms cited would, in some way or other, have an effect on southern Louisiana and southern Mississippi. To what extent that would be impossible to say; but they would all have an effect in some way or another.

Q. Would that effect be dependent on the distance of the storm center from the locality in question?

A. Well, it might, it would depend more on the intensity of the storm than on anything else; but the position of the storm would also be a consideration.

By Mr. ZACHARIE:

Q. Have you, connected with the Weather Bureau, made a study from the data before you, of the effects of any of these storms?

A. Well, no, my work has all been in the line of studying up the causes in the atmosphere which produce them with a view of forecasting them. I never made a study of the effects of the storms.

Q. In other words, to ask the question differently, have you ever studied where the damage came from any of these storms, whether from the front of the Gulf or from the rear waters being driven from the rear, that is, from the sound; for instance, if you have ever noticed, from your study or personal experience—

A. Well, now, I don't remember to have had an opportunity to study that particular question.

Q. You would not pretend to locate the particular violence of any of these storms which you have mentioned, in regard to the locality in question here?

A. No sir, that would be impossible from the amount of knowledge that we have.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, the following extracts from the reports of the Superintendent of the United States Coast Survey. Report for the year 1852, page 43, the following extract "Since the close of the season in this section, a hurricane has swept over that portion of it from Chandeleur bay up to Mobile bay, and has so altered the regimen of the vicinity of some of the islands, as to induce a re-examination of Naso roads, and of Horn Island pass, before publishing the charts which had been prepared. The light-house at Chandeleur islands was destroyed. A break was made through Ship island and also through Petite Bois island. The results of the re-examination will be given in my next report."

Report for 1853 of the same department, page 67—"Mr. Gilbert reports great difficulty in the preservation of the station points on the south and east shores of Lake Borgne, as many of them necessarily placed near the water are liable to its encroachment. Procutors point, on Lake Borgne, has been washed away to the extent of 50 or 60 feet in two years. He has taken pains to secure the points as far as practicable." Page 68, same report. "Mr. Gilbert upon closing his work in that section, and finish-

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the computations required, has been employed in the execution of the table work in section 1. Topography.—Assistant William Greenwell who has executed the topography in this section from commencement in 1847, resumed that portion of the work in November last, and continued until May, commencing at Isle au Pied, extending along the southern shore of Mississippi sound and the Borgne nearly to the western limit of the lake (see sketch H, 1). Two sheets were completed, comprising an area of ninety-four (94) square miles, and an extent of shore line four hundred and twenty-five (425) miles. Re-surveys were also made of part of the island and Dauphine islands, to ascertain the changes produced by the hurricane of August 23rd, 1852. Mr. Greenwell was assisted in this work by Mr. William M. Johnson, and used the schooner *Penix* as means of transportation and accommodation of the party. In his report upon the character of the topography of this region, Mr. Greenwell speaks of the great changes in the position of the shore line thus: 'From the experience of the past year, I find that the lake shores of this region, and so, likewise the sound shore running from Isle au Pied to Malheureux point, are fast being cut away, at the rate of 75 to 100 feet per annum.' 'What is worthy of remark also is, that whilst these inland shores, subject to the fierce waters of the winter, are being washed away, the eastern shores of this marsh region though washed by the heavy waves of the Gulf, are gradually encroaching upon the sea in nearly the same ratio.' 'This last may be attributed mainly to the undertow which is constantly throwing up sand banks and reefs outside, which serve to check the force of the waves, and behind which deposits are being made by the eddy at each succeeding gale, until this gradually rises above the surface and becomes linked with the main shore itself. This mass of sand, shells etc. is so firmly cemented, as it were, with the marsh mud, as to resist without wash the heavy swell from the Gulf.'

Page 69, same report.

"Nassau roads at the north end of the Chandeleur islands, was next examined to ascertain what effect the same storm had produced upon the passage there, and whether any changes had taken place since the survey of May 1852. No material change was found to have occurred in the hydrography of the roads since that time.

The lighthouse had been destroyed by the sea from the northward undermining its base; and there is some slight change in the topography of the point. As the dwelling of the keeper is still standing, it may be used instead of the lighthouse in the sailing directions, as it was adjoining the tower."

Counsel for the State of Louisiana now offers in evidence the extracts as read from the two reports.

Cross-examination.

By Mr. McCLURG :

Q. Mr. Cline, I understand that you are district forecaster in the Signal and Weather Bureau?

A. In the Weather Bureau?

Q. In the Weather Bureau of the United States Government?

A. Yes sir.

Q. And your duties have reference to forecasting and giving that information to the public?

A. Yes sir, with reference—

Q. To these storms, tornadoes and hurricanes?

A. Yes sir.

Q. And as to the effects they produce?

A. And also keep a record of all phenomena of a meteorological nature.

Q. And in that line you undertake to speak as an expert?

A. Well, no, I am not speaking as an expert. I am giving evidence as to what the records show. I was not summoned as an expert.

Q. You do not undertake to speak even as an expert forecaster?

A. I consider myself an expert forecaster when it comes to predicting; but it is the past we are dealing with here, I am not forecasting the past, but when it comes to forecasting the weather I consider myself an expert in that. I am just telling you what is in the past.

Q. As a matter of fact you have not testified to anything at all about forecasting, in this testimony?

A. No.

Q. You are out of your range in giving this testimony as an expert?

A. I am not testifying as an expert. I am giving what the records show.

Q. You are a keeper of the records?

A. I am producing the records of the United States Weather Bureau.

Q. You do not undertake to say what effect these several storms and hurricanes of which you have given references, had upon physiological formations?

A. No, I could not say what effect they have had.

Q. You do not undertake to say whether any of these storms or hurricanes to which you have referred, have made any material changes on the East Louisiana coast in the neighborhood of Lake Borgne or the Mississippi shore?

A. I could not say that they had made any change.

Q. As far as you know those lines around Malheureux point, Proctorville and on east to Isle à Pitre, are the same now as they were in 1812 or 1817?

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A. It would be impossible for me to say anything about those lines.

Those records to which you have referred do not indicate any material changes?

These records deal only with the movement of storms in a general way.

Then do you find anything special in those records that indicate any material change in the conformation of the marsh lines?

These records do not take up that subject. These are, as far as my knowledge of the question goes.

Are there any records in your office that would indicate any changes in the geographical conditions of that section?

A. Nothing that I can call to mind.

Redirect examination.

By Mr. ZACHARIE:

Q. In regard to that portion of your testimony in regard to the change or the shifting of the winds in the movements of these storms, have you not testified as an expert from your knowledge and study—

A. Well, on the movement of storms and shifting of winds, I would consider that I have given that from the authorities that I have studied, all authorities agree on that. I do not consider that could be expert testimony, but that is an established fact accepted by all authorities, not by me alone but by all meteorological authorities and I do not consider that as expert testimony because—

Q. It comes from your study of the authorities?

A. Yes sir; those are movements that are established by the authorities, and also by meteorological observations.

Q. Then in so far as that portion of your testimony is concerned, it is really expert testimony?

A. That would be, you can term it, the facts in the case.

Q. Would there be in the possession of the Weather or Survey Bureau any source of information in regard to these different storms as to show at what particular point the storm center was, further than what you have read?

A. These charts show as near as, I presume, the bureau can get it. The charts in Bulletin II show the movements of the storms as near as the bureau can get at it, I presume.

Q. Do those charts show the center of these storms?

A. The lines show the movement of the storm and I presume are as near the center as it is possible to locate them. These maps go as part of this history.

Q. Do any of these maps show the center of any of these storms as touching this disputed territory, that is, that portion of Mississippi sound or the gulf of Mexico lying between this peninsular of Saint Bernard and the Mississippi shore; if so please point out—

A. These charts show the tracks of the storms passing over southeastern Louisiana as follows: 1895, August 14th and 16th; 1885, September 25th and 26th; also September 20th and 21st near and north of Port Eads moving towards the east; 1889 September 23rd; 1892 September 12th; 1882 October 19th, 1895 October 30th and 31st. These I believe are the only ones that passed directly over the territory in question.

Q. You mean to say the storm centers were immediately in the neighborhood of this territory in question?

A. In these instances, the tracks of the storms as given in these charts there with Bulletin H. The track of the storm as given on these charts is, as I understand, to represent the course of the center of the disturbance.

Q. As I understand, the center is the maximum violence of the storm?

A. No, the maximum violence of the storm is, as a rule, to the eastward of the center.

Recross-examination.

By Mr. McCLURG:

Q. Do I understand you to say that these storms you have just spoken of, in 1882, 1885, 1892 and 1895, passed through the territory in dispute in this case?

A. They passed over southeastern Louisiana.

Q. Did they pass over that portion of the Mississippi sound immediately east of Lake Borgne and as low down as Malheureux point and Isle à Pitre, in that section?

A. I should judge that the storm movements covered that area, from the tracks of the storms as given here.

Q. But I understood Mr. Zacharie's question to be, the storm center?

A. I could not tell you exactly the point over which the storm center passed. I can tell the area over which the storm would prevail but as to the locality traversed by the exact center I cannot tell that from these maps, these maps do not show the exact localities in question.

Q. Do your maps show in what direction those storms travelled?

A. Yes sir.

Q. Tell me in what direction the storm of October 30th and 31st 1895 travelled with reference to that section?

A. It moved from a westerly direction towards the east and a little north of east.

Q. And near the Mississippi shore, did it not?

A. Well, now, I could not say definitely where it touched on the Mississippi shore. Our record shows it passed in just to the south of—the center of it—to the south of the 30th parallel of latitude.

Q. And travelled easterly?

A. Yes sir, that was the general movement of the storm.

Now, the storm of September 25th and 26th, 1885, was what section?

By Mr. ZACHARIE:

Q. Will you state where that storm struck the northern portion of the projection of Louisiana if you can?

A. That would be impossible. You see the storm came in here over the southwestern part of Louisiana and passed off to the east.

By Mr. McCLUNG:

Q. Did it pass into the Mississippi main land?

A. It did not go north of the 30th parallel of latitude as shown on this chart, it is not charted north of that.

Q. Can you tell from your chart at what point it struck the 30th parallel?

A. It did not go north of the 30th parallel at all, it is south of the 30th parallel.

Q. But it struck the 30th parallel in Mississippi?

A. No, it don't go north of the 30th parallel, it moved east just a short distance south of that.

Q. It don't show where it struck it?

A. No sir, it don't show the passage north of it at all.

Q. What was the course of the storm of September 25th and 26th 1885?

A. That storm moved from the central Gulf north eastward across the 30th parallel of latitude, approximately in the vicinity of the 88th meridian west from Greenwich.

Q. How far is the 88th meridian east of Lake Borgue?

A. I could not answer that because I would have to refer to a standard map for that, I haven't it here. This does not show a detail map.

Q. One of the 20th and 21st of September 1885, how about that?

A. That one passed eastward across southeastern Louisiana a short distance north of Port Eads?

Q. Did it touch the territory in dispute?

A. Well, it would be impossible for me to answer that question unless I knew how broad the storm was. I don't know exactly where that territory is.

Q. It is right on the south of the Mississippi coast right up in Lake Borgue where Mississippi and Louisiana join at the mouth of Pearl river, in that section?

A. You see that map does not show sufficiently for me to judge.

Q. How is it you gave that storm in answer to a question to give those affecting the territory in dispute?

A. I gave those that passed over southeastern Louisiana. I told him I would give him those that passed over southeastern Louisiana.

Q. I understood that to be the first inquiry by Mr. Dymond and

islands contiguous to the shore of Mississippi; do you wish those named also?

Q. Well, within 18 miles of the Mississippi shore east of the extreme eastern part of Isle à Pitre?

A. On the Mississippi side of the sound, Deer island, lies off Biloxi bay, an island called Le Grand in the mouth of the West Pascagoula river, an island immediately east of the latter, an island called Round island about mid-way of Mississippi sound off Pascagoula; I think that is all that can be properly separated from the shore line.

Q. Then do I understand you to mean that the islands just named by you, are shown to have been in existence at the time that the Coast and Geodetic Survey was made in 1852?

A. Yes sir; I cannot say exactly as to date those islands were surveyed, without inspecting records, but it was about 1852.

Q. In your examination, Mr. Hodgkins, of the records in the office of the Interior Department in Washington, did you find any evidence of any survey of this country south of the point between Malheureux islands and Isle à Pitre, to have been made as giving that territory to Mississippi?

A. I saw no surveys from the Mississippi shore extending south of Grand island sometimes called Half Moon island.

Q. Did you find surveys in the Interior Department showing that this area of country been Malheureux islands and the eastern extremity of Isle à Pitre had been surveyed by the United States Government as belonging to Louisiana?

A. It is my recollection that the land surveys covered that whole area, although my special attention was given to the Malheureux islands distinctly, and I do not remember so much about the other plat books, but it is my impression that the survey had covered the whole area.

Q. Did you find that the Malheureux islands had been included within any survey at all by the United States Government made by the authorities of the United States Government?

A. As I just stated Grand island was included in the Mississippi land survey; not only Grand island but also Grassy island, Round and Petite Bois islands were included in the survey under the surveyor general of Mississippi.

By Mr. FLOWERS:

Q. I believe you said that you found on map Mississippi B a bayou corresponding with the one on map No. 19 along which you drew a line indicating your idea of the physical coast line of Louisiana as shown by that map. Will you please state what that bayou is on map Mississippi B?

A. The bayou is marked in two places, one place Otter bayou and another place Bayou La Loutre which of course mean the same thing; but I think I noted before that although there is a certain resemblance that the coincidence is by no means close; it is some-

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conjectural whether they are the same bayous, but it might be interpreted however.

Please indicate on map Mississippi B, the mouth of that bayou Lake Borgne, in red ink?

I mark the point requested, by a red cross and the letter E. Mark the other end of it please, where it enters the waters on south?

That is to say, the other end of this particular passage?

Yes.
There are two southern entrances. I will mark the most northern one and I mark that likewise by red cross and the letter F. I would like to add, Mr. Flowers, to that, that this bayou which I have just marked E-F is the same one which I previously described in my testimony as being the apparent rigid limit of the physical extent of the continent in this region.

At this stage of the proceedings, the hearing was adjourned by the commissioner until tomorrow April 15th 1904, to be resumed at the same place and at the hour of 10.30 a. m.

APRIL 15, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place, at the hour of 10.30 a. m.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y general of Louisiana, Mess.
John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. J. N. Flowers, ass't att'y general of the State of Mississippi.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

ISAAC M. CLINE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I live in New Orleans.

Q. What is your occupation?

A. I am district forecaster of the United States Weather Bureau.

Q. How long have you been following that profession or occupation?

A. Since July 7th, 1882.

Q. When did your employment start in New Orleans?

A. On August 7th 1901.

Q. Where were you employed prior to that date?

A. At Galveston, Texas.

Q. For how long were you in Galveston?

A. From March or April 1889 until July 1901, inclusive.

Q. Prior to that, were you in the employ of this same Government service at other points?

A. Yes sir.

Q. Have you been continuously in the employ of the Weather Bureau of the United States Government since 1882?

A. Signal Service and Weather Bureau.

Q. What are your duties in connection with your office?

A. Well, my duties are district forecaster and supervising official.

Q. Do your duties involve the recording of storms and other elemental troubles?

A. Yes sir, everything of a meteorological nature.

Q. Has the Government taken any steps to compile data concerning the meteorological disturbances?

A. Now, they have compiled a publication called Weather Bureau Bulletin No. 232, United States Department of Agriculture, Bulletin II, West Indian Hurricanes, by E. B. Garriot Professor of Meteorology, prepared under direction of Willis L. Moore, chief U. S. Weather Bureau, Washington. Weather Bureau, 1900.

Q. From what date do the statistics of the Weather Bureau, or, are the statistics of the Weather Bureau Department by actual records?

554 A. Well, the Weather Bureau commenced actual records in 1872 or 1871, I think at some stations, 1871 here.

Q. Prior to that date, from what source did the Government get its information in regard to previous storms?

A. Well, that was taken from official and other publications, different publications they could get that were considered sufficiently reliable to use the information.

Q. Have you, in your position as forecaster, forecast official, located in the city of New Orleans, had occasion to study the history of storms in Louisiana, since the creation of the bureau, and prior to the creation of the bureau?

A. Well, only as published in that report that I cited, I have had occasion to use the report and study it.

Q. Are the records to which you have referred, the best obtainable records on the subject of storms in the locality of southern Louisiana and southern Mississippi?

A. I consider them so. The bureau publishes only the best, only that which passes through the careful scrutiny of the supervising officials.

Q. Are you prepared to give a list of the storms which have occurred in this general locality since 1804?

A. Yes sir. I have prepared a list from the publication cited above.

Q. Will you please state what storms have occurred in this locality since 1804, giving their date as near as you can?

Well, 1812, August 19th, New Orleans, 1822, July 11th, Mobile. I am only citing those that pass in the vicinity of this section.

Yes.

In 1835, August 12th and 8th, Cuba and Galveston. 1839, September 5th, Galveston. Then there were 12 hurricanes of which we have no exact dates here.

Between what dates did they occur?

From 1856 to 1877. Then I have a record here that I was referred to in the report of the Coast and Geodetic Survey.

What year's report is that you are citing from now, of the Coast and Geodetic Survey?

1853.

What date did the storm occur as mentioned by that report?

August 23rd 1852. Then I have a number of charts that give the paths of the hurricanes from 1878 to 1900 inclusive; these are compared from reports of the Weather Bureau from 1878 to 1900. I have noted the dates of such as passed in the vicinity of the 90th meridian, somewhere in the vicinity of the mouth of the Mississippi river, that is, somewhere between Mobile and the 92nd meridian.

Where would that carry you, so far as locality is concerned, the Sabine river?

No, that would not go as far as the Sabine river.

It would be east of that?

You might as well make the Sabine river the western limit, it goes as far as that river, because all those mentioned pass inland to the east of the Sabine river.

Will you please state the storms which have occurred subsequent to the dates you have just mentioned?

During August, 1880, 30th to 31st; 1888, 19th to 20th; 1894, 6th-9th; 1895, 14th to 16th. During September: 1885, 20th to 21st; 1885, 25th to 26th; 1889, 23rd; 1892, 12th; 1893, 7th and 8th; 1890, passed through the Gulf south of New Orleans on the 7th. During October, 15th and 16th; 1882, 19th; 1886, October 12th; 1892, Oct. 23rd; 1895 October 30 and 31st. Now, those are the only dates I have of storms that passed in the neighborhood of the mouth of the Mississippi river.

Do you remember the date of the storm when so many people were killed in southern Louisiana in the neighborhood of Cheniere Caminada?

No, I have no record of that, I can find—you see that was before our records were kept I believe.

No, I mean on October 1st 1893?

Are you sure that was in 1893?

Yes.

I believe I have skipped that. There is no chart of that here in October. That probably was a local Gulf storm, that is not charted, there is no chart of that here, that is not charted as a West Indian hurricane. Now, we have those frequently that are locally devel-

oped in the Gulf that are not chartered as hurricanes, they spring up and are of short duration and die out. I probably have records of that in the books up stairs.

Q. Be kind enough to search for it.

A. Yes sir.

Q. Where were you in 1893?

A. I was at Galveston, but I do not call that storm to mind just now.

Q. Would you have records in your office up stairs which would show that storm?

A. Yes sir, our records should show a reference to that storm in our journal and also our maps. Let me look here just a minute in October and see whether there is any reference to it. Here it is, right here, I have it. I will read the full report of that storm.

Q. Please do so.

A. "So-called Gulf hurricane of October 1-6, 1893. A small violent whirl in the gulf of Mexico on the 1st, the early history of the storm not being known. It developed rapidly, striking the Gulf coast on the same date, its destructive influence being felt from New Orleans, La., to Pensacola, Fla. It had reached the southwest corner of Alabama on the morning of the 2nd, and was central in the northern portion of Alabama on the 3rd. On the morning of the 4th it had reached the Atlantic Coast line in North Carolina near Hatteras, and was dissipated in the Atlantic on the 5th. Violent wind, heavy rains, and local storms attended its progress through the South Atlantic States, though the greatest amount of destruction and loss of life occurred in Louisiana, where the track of the storm passed between Port Eads and New Orleans. As the instruments used in the weather service were blown away, or destroyed, only an estimate of the maximum force of the wind was made, which placed the velocity at 100 miles an hour near Pointe a la Hache. The storm was accompanied by a tidal wave which engulfed everything before it, explaining the great loss of life reported, one local account placing it as high as 2,000. The canning interests suffered severely, and there was immense destruction to shipping, the property losses in 556 the aggregate footing up millions of dollars. There was great suffering among the living in many localities, and in some instances, as on the islands, it was necessary to use for food dead animals and poultry that had perished in the storm. In the vicinity of Mobile, Alabama, the storm was very severe, though unattended with the terrible loss of life recorded in Louisiana. In the marsh truck farm region nearly every house was swept away and the crops destroyed; 7 lives were lost. At Pensacola, Florida, considerable damage was done to the water front, and there were bad washouts on the railways. The influence of the storm extended to Savannah, Georgia."

By Mr. McCLURG:

Q. Are we to understand that this historical fact is to be copied into the record as part of your testimony. Is that the object?

I am only citing the published report, that is the only testimony I have given, is the published reports by the bureau. I am not citing the records. I do not know anything about it personally. I am only citing the records.
If it is an official record you do not have to read it to get it into the court.

I can leave these records.
That is between you and your counsel. I just wanted to understand the purport of this investigation.

By Mr. DYMOND:

Can you furnish counsel for the State of Louisiana and counsel for the State of Mississippi, and the Supreme Court, one copy each of that publication?

By Mr. McCLURG: I would like to have the records that have been introduced on the part of Louisiana so I may have an opportunity to examine them.

It is agreed between counsel for the State of Louisiana and counsel for the State of Mississippi that counsel for the State of Mississippi shall be furnished with a copy of Bulletin II, United States Department of Agriculture, Weather Bureau, West Indian Hurricanes, by E. B. Gariot, professor of meteorology, prepared under the direction of Willis L. Moore, chief United States Weather Bureau. That such extracts therefrom as may be desired, on either side, to be entered in the record, shall be made therefrom without the necessity of introducing the original bulletin in evidence in its entirety.

It is further agreed between counsel for the respective States in the presence of the commissioner that extracts may be made by either side from the report of the Superintendent of the United States Coast Survey for the year 1853 and entered in the record by either side without the necessity of offering the original report in its entirety and that an opportunity shall be furnished to counsel for the State of Mississippi to examine the said report so that they might be able to make such extracts therefrom as they desire.

By Mr. DYMOND:

Q. With the exception of the storm which you have mentioned occurred on October 1st, 1893, what was the character of these other storms, in a general way, how were they denominated?

A. They were denominated as West Indian hurricanes. I will get the exact wording of it. West Indian hurricanes.

Q. Are you able to state what the maximum velocity of the wind is in these West Indian hurricanes?

A. Well, it varies, at different times, under different circumstances, from a moderate wind to a wind that we have been unable to get a velocity of. I have known 100 miles an hour to be recorded for a minute, before the instrument would be blown away.

that Judge Zacharie meant to confine you to this territory in dispute?

A. I have given, in my opinion, all of these storms that affected the territory in question; judging from my knowledge of storms I would say that all of these storms cited affected that territory in question.

Q. I understood that Mr. Zacharie asked you about the storm center?

A. Yes sir.

Q. Now, about the direction of the storm of 1892, September 12th?

A. Well, that storm moved from the central Gulf northerly and to the east of north and passed over southeastern Louisiana and cut the 30th parallel of latitude, well, about, I guess about the meridian of 88, came very close to where the other went across it. These are approximate, because I have not the exact meridian here.

Q. Tell us about the storm of October 30th and 31st 1895?

A. That storm passed eastward across southeastern Louisiana, to the south of the 30th parallel of latitude. I have given that already.

Q. You have no record there of the storm of 1893?

A. Nothing further than what I have stated.

Q. What about the storm of October 19th 1882?

A. That storm passed north easterly across southeastern Louisiana, the center passed slightly to the north of New Orleans, thence eastward south of Mobile.

At this stage of the proceedings, W. C. Hodgkins, witness on behalf of the State of Louisiana, requests of the commissioner an opportunity to make certain corrections in the report of the testimony as given by him, which opportunity is accorded him.

MR. HODGKINS: Mr. Commissioner, I have noticed in the morning paper, the Daily Picayune, what purports to be a report of my testimony given yesterday and I notice one or two statements which do not agree with my testimony, at any rate, as I intended to give it, therefore I ask the privilege of noting the corrections to these statements assuming that the statements may perhaps have crept into the stenographer's report. It is here stated (reading from Daily Picayune) Questions by counsel for Louisiana: "What do you consider the coast line of Louisiana from Malheureux point going eastward?" Answer: "There comes up that old question of what is the coast line, whether you mean the physical or political coast. When we speak of the physical coast of a continent, or an island, we mean the boundary between the solid land and the water. When I say solid land and the water, I do not mean necessarily very solid land, but continuous land. The line that exists for the purpose of boundaries is assumed between these two formations. But when we talk about the political coast line, we mean the line that is supposed to follow around the outer portions of the coast and running across

bays from headland to headland, jumping across narrow inlets, generally in settling the whole territory of the State or nation." That is quite a perversion of what I stated, in two points; first, in regard to the physical coast. What I said was "That line exists for the purpose of boundary between those two formations, that is to say, between land and water." When I spoke of political coast line I said "That line that is supposed to follow around the outer portions of the coast running across bays from headland to headland, jumping across narrow inlets and in general circumscribing the whole territory of the State or nation." I would ask that that stand as my testimony on that point. There is another statement made here in regard to a disclaimer on my part in regard to the preparation of the report made at the request of the Hon. F. A. McLain Congressman from Mississippi in which it is stated that I testified that if I had known that the report would be filed in a boundary suit I would have prepared it with more care. I wish to state that that qualification was not intended to refer to the report itself, but to sketch No. 2, especially, which accompanied that report, on which I drew certain lines approximately parallel to certain shore lines as shown on the same sketch. I ask that that be recorded as the intent of my testimony in that regard.

566 J. B. BAYLOR, recalled, on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. You have already testified that you have been engaged in the Coast and Geodetic Survey work along the territory in dispute in this case?

A. Yes sir. I was engaged in 1903, the spring of 1903.

Q. How long a time were you engaged in that locality?

A. I can't give it exactly, but somewhere about a month and a half or two months.

Q. Have you had occasion from personal observation to examine the deep water channel?

A. Only from the charts in connection with my work there, Coast Survey charts.

Q. Did you make any examination of the depths of that channel for the purposes of the navigation of vessels?

A. Yes sir; I examined the charts very carefully in connection with the navigation of the vessel I was on.

Q. What did she draw?

A. She is a light draft vessel drawing somewhere about from 5 to 6 feet.

Q. What portions of this water lying between the northern coast of this disputed territory and the Mississippi shore, was she able to navigate?

A. She could navigate all that water, practically.

Q. In regard to any other larger vessels did you see any there?

A. Yes sir, I saw vessels pass quite frequently.

Q. Of what drafts?

A. That I am not prepared to say as I did not examine the drafts, but certainly drawing more than five or six feet of water.

Q. What did they navigate?

A. They navigated the Mississippi sound.

Q. In regard to the navigation of this channel which you have before testified to, what vessels of what depth, or about what depth, can navigate that channel?

A. I should like to have the chart before me, before I answer that question.

Q. (Witness is shown map No. 17.) What did you observe in regard to vessels of a deeper draft navigating that water?

A. I noticed that no vessels of deep draft went down through that disputed territory.

By Mr. McCLURG:

Q. Do you mean below Malheureux point?

A. Between Malheureux point and the end of Isle à Pitre.

By Mr. ZACHARIE:

Q. In so far as this deep channel was concerned, what did you observe, if anything, in regard to the navigation of it by vessels of deeper draft?

A. I noticed that all vessels of deep draft going to the gulf
567 of Mexico from Pearl river or the Rigolets, when going directly to the gulf of Mexico, they seemed to go through that channel, going by way of Gulfport, they went through that channel down Mississippi sound.

Q. Do you know why, or for what reason, these vessels go down to Gulfport to take that other channel to the eastward?

A. Usually it seemed to me because most of them called at Gulfport in their route to the Gulf.

Q. Are you aware of any deeper water off of Gulfport?

A. There is a very much deeper channel from Gulfport to the gulf of Mexico, it is a dredged channel, artificial channel.

Q. Do you know about what depth it is?

A. They claim it to be somewhere about 23 feet of water, I think, at mean low tide.

Q. That is eastward of this territory in dispute?

A. Yes sir.

Q. It has no relation to this case, the deep water channel at Gulfport?

A. It does not seem so to me.

Q. We have some testimony in regard to two channels, that is to say, the channel from the mouth of the East Pearl river going

eastward and a departure or branching off of the two channels. Do either one of these channels go south of these Malheureux islands?

A. Neither of them.

Q. Now, is there any other information that you can give us in respect to that channel which would assist in elucidating this case?

A. I do not know that I could, except that it seems to be the only channel, in fact, it is according to this chart the only possible channel for a vessel leaving Pearl river drawing as much as nine or ten feet by which said vessel could reach the gulf of Mexico by any channel west of Cat island.

Q. Would be this particular channel?

A. Yes sir.

Q. Is that the only *bouyed* channel until it branches off?

A. It seems to be so on this chart.

Q. Does your personal observation, as far as it goes, accord with what is designated on that chart?

A. Yes sir, it corresponds, inasmuch as it seems to be the most direct and feasible channel to reach Pearl river from the channel between Isle à Pitre and Cat island.

By Mr. DYMOND:

Q. Will you please look at this map Mississippi Exhibit A, and note a red line running across the southern portion of the map and marked Mississippi line, and note the location of that line: Will you now please look at map No. 17 and note the location where this Mississippi line would go if projected on map No. 17, and state what the average depth of water would be along that red ink line shown on Mississippi's Exhibit A?

A. In some place it crosses solid marsh that has practically no water except when you have extraordinary winds that cover the marsh with water.

Q. Where there is water, will you please note the average depth of it?

A. According to this Coast Survey chart map No. 17, which is my sole information on the subject, inasmuch as I have never
568 been in that immediate territory myself, there seems to be places in which there seems to be depths of $4\frac{1}{2}$ and $3\frac{1}{2}$ feet at mean low tide. There is an average tide of about a foot and a half, in these waters.

*Cross-examination.

By Mr. McCLURG:

Q. These vessels that you speak of travelling the deep water channel, are seagoing vessels, are they not, mostly?

A. It depends entirely on what you would term a seagoing vessel; they are coasting vessels, vessels engaged in the coasting trade. I do not think I saw any vessels going out of Pearl river or the Rigolets going to any foreign port.

Q. And that was during the spring of 1903?

A. Yes sir, though I am not positive on that point, but the impression made on my mind was that the majority were engaged in the coasting trade.

Q. As to how that was in 1812 and 1817, you do not understand to say?

A. I do not, most decidedly.

At this stage of the proceedings, the hearing was adjourned and the commissioner for recess to be resumed again at 2.15 p. m.

Resumption of Proceeding.

2.15 p.

Pursuant to adjournment for recess the hearing was resumed at the same place, and date, at the hour of 2.15 p. m. all parties being present.

FRANK L. LOOMIS, witness sworn and examined on behalf of State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. In New Orleans, La.

Q. What is your business?

A. I am assistant manager of the American Printing Company.

Q. Does that company do a printing business?

A. Yes sir.

Q. Will you please look at these plates which are submitted to you for examination and state whether you have ever seen them before?

A. Yes sir. I have seen this one (referring to stereotyped plate exhibited to him).

Q. You have also looked at the second stereotyped plate?

A. Yes sir.

Q. Will you please now look at the third stereotyped plate?

A. Yes sir.

Q. Will you state the circumstances under which you first saw those plates and the purpose for which you first received them?

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A. They were delivered to me by the photograving company.

Q. For what purpose?

A. To print some maps which were embodied in a brief of the oyster commission.

Q. Will you please look at these diagrams which are marked diagrams Nos. 1, 2, 3 and 5, attached to the original bill of complaint in this suit of The State of Louisiana vs. The State of Mississippi, and state whether those diagrams were printed from the stereotyped

plates which you have just been testifying about and which you have just examined?

A. Yes sir, they are.

Q. When you stated a moment ago that these stereotyped plates were used in connection with printing a brief for the Oyster Commission of Louisiana, did you mean that to be a fact or do you mean it was for the original bill of complaint in the suit of The State of Louisiana *vs.* The State of Mississippi?

A. No sir, this is the brief of The State of Louisiana *vs.* The State of Mississippi.

Q. That is the document for which—

A. We printed this brief (witness refers to bill of complaint in the suit of The State of Louisiana *vs.* The State of Mississippi) and bound those diagrams in there.

Cross-examination.

By Mr. McCLURG:

Q. Did you have anything to do with making the plates that have been exhibited to you?

A. No, sir.

Q. Do you know whether they are correct or not?

A. No sir.

Q. You made these maps from those plates?

A. That is, we printed the maps from the plates as delivered to us.

Q. The maps are not correct unless the plates are, are they?

A. The printing—they are bound to be reproductions of the plates.

Q. If the plates are wrong the maps are wrong?

A. Yes sir.

Q. And you are not prepared to say that the plates are correct?

A. No sir.

Q. Did you ever see a plate made for the use of the State of Mississippi?

A. Not to my particular recollection, no sir.

Q. Did you make a map for the State of Mississippi to be used in this controversy with Louisiana?

A. Not that I recollect of, I might have made one, if I saw it I could tell.

Q. Look at this map which I show you Exhibit A to the deposition of W. K. M. Dukate on cross examination April 8th, 1904, and say whether this American Printing Company made that map?

A. No sir, the American Printing Company did not.

Q. It did not make that map?

A. No sir, it did not print it.

Q. Do you know who made that map?

A. No sir.

570 Q. Have you any idea from the physical appearance of the map, or otherwise, who made the plate from which the map was made?

A. It has the imprint of the photo-engraving company on it.

Q. That is the same company that made your plates?

A. Yes sir.

Q. Then the same company that made your plates made the plate from which this map that I now show you was made, so far as the certificate or indication there will show?

A. The indications are that way, yes sir; it has the imprint of the photo-engraving company on it.

Q. Then I understand that the same company that made the plates shown you by counsel for Louisiana, made the plate for the map which I now show you?

A. I would judge so from that imprint, yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. Are you familiar with the manner in which these plates are made?

A. Yes sir, to a certain extent.

Q. Is there any possibility, if so, what, of mistakes being made in maps by the process of stereotyping?

A. No sir, that is, the plate could be changed but not by mistake.

Q. Not by the process?

A. No sir, any changes could be ordered and made.

Q. Afterwards, in the plate?

A. Yes sir.

Q. But in the process of making the original plate is there any possibility of any error or mistake being made in making the plate?

A. The plate would be naturally a reproduction from the photo-engraving.

By Mr. DYMOND:

Q. If a photo-engraver was given a piece of work to reproduce by the stereotyping process—

A. We will say first, photo-engraving process.

Q. Photo-engraving process; if there was an error in the map that was given him to reproduce, would that same error re-appear in the map that was printed?

A. Yes sir.

Q. Do I, or do I not, understand that the map that is printed must be correct in order to get correct results?

A. Yes sir.

Q. And therefore any error would be an error that was in the original map that was given to the photo-engraver to reproduce?

A. Yes sir.

Recross-examination.

By Mr. McCLEURG:

Q. Tell me the difference between the process of making the maps shown by counsel for Louisiana and the map which counsel for Mississippi now has shown you?

A. I do not think there is any difference; there is a possibility of being a difference, but I know there is not in these two. Maps can be made by different processes, they can be lithographed.

Q. But were these maps presented to you now by the counsel of the two States, made by the same process?

A. To the best of my knowledge, yes sir.

JAMES WILKINSON, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?

A. I am forty eight years old.

Q. Where do you live?

A. I was born in the parish of Plaquemines on the east bank of the Mississippi river, 60 miles below New Orleans.

Q. How long have you resided in that parish?

A. All my life, with the exception of the time, off and on, I was in New Orleans.

Q. Did your ancestors live there?

A. My great grandfather, James Wilkinson, was one of the commissioners that received Louisiana from the hands of the French, and ever since then my family, my grand father, father, and myself have successively lived in that section of the country.

Q. Have you, at any time, been district attorney of the judicial district embracing Saint Bernard and Plaquemines parishes?

A. Yes sir, from 1884 to 1892 I was district attorney of the parishes of Saint Bernard and Plaquemines. I was a practising lawyer there for three years before I was elected district attorney and have practised law there ever since.

Q. Have you ever had occasion to visit this disputed territory in the suit, which I presume you know about, or any portion of it?

A. Yes sir.

Q. What portion of it have you visited?

A. All the way from, you may say, the mouth of the bayou that leads from Terre Beuf canal, all the way around to Cat Island pass opposite Pass Christian. I have been around that section, particularly the east portion of that section, a great deal when I was district attorney. When we had court at Saint Bernard I would frequently go down to Shell beach, as it was known, and that Saint

Malo country down there, and along that section, fishing and sometimes hunting.

Q. That was on the southern coast of this territory.

A. That was on the southern, I judge it was towards the southwest, I should judge, of the disputed territory, and I also have sailed along that shore on various trips over to the towns along Mississippi sound, in Mississippi.

Q. What shore are you talking about now?

A. I am talking of the north shore of the disputed territory on Lake Borgne. I have never been outside, on the sea side, that is, between Chandeleur islands and this section, I think it is Chandeleur islands, on the outside.

Q. When you say that shore, do you mean the shore between Point Malheureux and Isle à Pitre?

A. If you show me exactly where Point Malheureux is, I have forgotten the name of it. Now, I have been along there all of the way between Proctorville on the map and Point aux Marchettes. I refer now to map No. 17. Then I have come out of the Rigolets and been along this entire coast south of the Rigolets or southeast of the Rigolets all the way to Cat Island pass and then across there to Pass Christian where my father stayed for a number of years. I sailed along this sound very frequently.

Q. Do you know the character of the soil in the territory in dispute?

A. The character of this soil as observed by me in this section of the country, the section of the country that is north from Proctorville towards Malheureux point, is very similar to the soil on the west bank of the marshes, on the west bank of the river, except, I think that the lands on the west bank of the river, the blue clay strata or sand strata as it might be, below the old decomposed vegetation, somewhat like coffee grounds, is closer to the surface here than it is on the west bank, particularly, I have noticed it particularly on the east bank where they are dredging below this point, from Pointe à la Hache coming up, the blue clay strata there seems to begin about 5½ feet below the old decomposed vegetation of the swamp, whereas on the west side it seems to be six or seven feet below. I have done a great deal of dredging, I am secretary of the company now that has, within the past two years, dredged over 200,000 cubic yards through the swamps on the west bank, and I have been probably, out in these prairies, off and on, during the last 25 or 30 years, I have been probably out there almost every week, with few exceptions, either in the bayous, bays or prairies. I have been very fond of that kind of work and have done a great deal of travelling around and have observed the contour of the lands, the formations of the lands, and the various depths of the waters. I was president of the company that built the large Ocean Club hotel on Grand island where we had probably the largest hotel in the South, about four times as large as the Mexican Gulf hotel at Pass Christian.

Q. Have any of your relatives owned or leased property in the vicinity of this disputed territory, that is, east of the river?

A. Yes sir—not in the disputed territory.

Q. No, but I say in the vicinity of the disputed territory?

A. Well, my brother owned the place near Proctorville, the last plantation, Theodore S. Wilkinson owned the last sugar plantation in Saint Bernard on the extreme end of the cultivable part of what is known as Terre Beuf ridge, about 14 or 15 miles from the river, and he owned that a number of years, and I frequently went there.

Q. Did you witness any excavations on that plantation?

A. Yes sir: he had a dredge, an immense dredge that was dredging out, on one of my visits, that I paid there, a canal leading into Lake Borgne and deepening the water way out into Lake Borgne.

Q. Did you observe the character of the soil there as compared with the soil that you spoke of, on the west of the river?

A. Yes sir, the soil, as I stated, over there where the prairies are, is very similar—or where the marshes are—is very similar
573 to the soil on the west side. The edge of Lake Borgne, though, in a number of places, there are shell banks right along the borders, in several places on the south side.

Q. Did you ever, in the course of your observations and works that you have witnessed, notice any facts which demonstrated the subsidence of that territory?

A. Yes, sir. My attention was first called to notice the subsidence of the marshes and lands of the section below the city, particularly the marsh section, by the works of Mr. Corthell and other engineers' writings on the gradual subsidence of the soil. I say my attention was first called, and then I examined for myself, for instance, a place known as Hermitage in the rear of Deer Range plantation, that is the west of the river—

By Mr. FLOWERS:

Q. When you speak of the river, what river do you mean?

A. I mean the Mississippi river. On the place known as the Hermitage, situated on the banks of Bayou Hermitage, where they used to cultivate corn, the lands were high enough to cultivate corn, I noticed afterwards that the ordinary tide water came up on to the land so as to prevent any cultivation. The lands that I used to hunt over and walked over almost dry shod, have sunk very materially. It is very perceptible, the difference between the levels.

Q. Well, did you ever notice, in your excavations, any evidence of a submerged forest, if so, what description?

A. Only day before yesterday we held a meeting, it was Monday, we held a meeting of the directors of the Gulf and Louisiana Transportation Company Limited, who are now dredging a canal through one of these same groves, and I made a certain estimate of work, and I came across two sunken oak forests where some of the logs or trees I would have to take out with dynamo, they were oak trees, that only grow on lands not submerged, and these lands were sub-

merged by the tides, over and over again, and frequently in these prairies, we found the same thing, evidences of where there had been groves of trees, very large trees. I moved a stump from about eight miles west of the river, I suppose, a stump about 3 feet in diameter, where to day you can hardly walk.

Q. How deep below the surface of the earth, did you find these remnants or evidences of forests?

A. About five or six feet.

Q. How much below the sea level?

A. All these lands are now practically at sea level as they are overflowed by very high tide, by medium high tide.

Q. Then this depth was also below sea level?

A. Yes, sir, I should say these stumps would be about five feet below sea level.

Q. You have spoken of one of the stratum of this marsh land; can you give us—in lower Louisiana—more definitely what you have discovered in your borings as to the character of the different stratum as you bore down?

A. Well, I have visited, as I say, where the dredge is working on the east side in, you may say, practically the same soil to this soil, that is part of the Terre Boeuf marsh country, Saint Bernard marsh country. Dredges at Pointe à la Hache below this, on the east bank of the river in the marsh country, dredges in the Mexican Gulf canal which is also a part of the Saint Bernard country, dredges belonging to the Barrow Company and dredges belonging to the 574 Barrataria Canal Company, dredges at Harvey's canal, dredges that have been working for my brother, dredges working for my own company, the dredges of Mess. Dowdle & Windelli working below there, a dredge belonging to Mr. Aymer, and also dredges belonging to the Louisiana Navigation and Fisheries Company. I have been very much interested in the excavation work going on at these different places and have visited, as I say, where these dredges are working, and have been very much interested in that work, and in the soils of the State and have made it more or less a matter of observation and there seems to be in all the marshes I have seen dug into, three kinds of three strata that you go into. The first or top soil is a soil composed of the matted roots of sea grass, sometimes wild cane, and they are matted together very closely and those roots extend to a depth of about 12 to 15 inches; below that is a decayed mass of vegetation resembling coffee grounds, not quite so red as coffee grounds, more of a mud color, but they are when dried very light and they will almost float in water particularly in a current. They look very much like old rotten wood; then below that stratum of coffee grounds as I call it, there is either blue clay or sand, varying at depths of between five and nine feet. There are some places that you can go, for instance, on the shores, the eastern shores of Lake Salvador, to a depth of about nine feet before you strike that blue clay or sand. On the eastern shore of the Mississippi river, however, I noticed you strike it quicker.

Q. You mean the eastern shore or the east of the shore?

A. I mean on the eastern side of the Mississippi river, the hard bottom is closer to the surface than on the west side, as far as I have been able to judge, and I have looked at it pretty carefully.

Q. Have you ever been out in any of these great storms which have visited southern Louisiana?

A. Yes sir. I was out in the last storm that visited this coast. I was out in the prairies at the time.

Q. What year was that?

A. I think that was 1901, I think, in October 1901, if I recollect right.

Q. Were you out in any other storm?

A. Not in the prairies, but I have been in the storms themselves, in fact, in the storm of October 1st 1893 which is the worst storm in point of violence that I ever know pass over that country. I was in that storm in company with yourself and Mr. Estopinal and if you recollect we had to get the furniture in the rooms and put it against the wall, we three propped up a wall with our bodies to keep from being blown into the river; the fury of that storm was something indescribable.

Q. Where were you then?

A. At Pointe à la Hache.

Q. This bears what relation to this disputed territory?

A. That is on the same side of the Mississippi river, on the east side of the Mississippi at a distance of about I suppose varying between 20 miles or 25 miles and 40 miles. That storm came from across Cheniere Caminada diagonally and passed across between Buras settlement and Pointe à la Hache. The vortex of it passed across the country in dispute, directly across it, striking the Saint Bernard club house out at shell beach on Lake Borgne, tearing it all to pieces and passed on over this section. This I know of my own knowledge.

Q. Have you ever noticed the effect of these storms upon these marsh lands in that section of the country?

575 A. Yes sir, but the effect is combined with other effects to produce, combined with other causes to produce the general effect, for instance, the lands, as I have described to you, seem to have been steadily sinking, that in itself would overflow these lands there at ordinary tide and would make ponds where originally had been solid land. The cause of that sinking, however, as far as I have been able to observe, has been—there have been four reasons for it. The first reason is, that originally, before the levees were put up, each year we had annual overflow from the Mississippi river which left a modicum of deposits of silt on these lands and continually renewed them and kept them above tide level; my reason for believing that is, that at the Bell crevasse in the rear of the Bell crevasse, the Davis crevasse, the Ames crevasse, the Bonnet Carre crevasse—

Q. Describe where those crevasses were on the east or west bank of the Mississippi river?

A. The Davis crevasse and the Bell crevasse were both above the city of New Orleans on the west bank of the river. I think the Davis crevasse was about 15 or 20 miles above the city, the Bell crevasse was below that, the Ames crevasse was almost opposite the city, the upper part of the city. The Myrtle Grove crevasse was below the city, 25 miles by rail and 35 miles by water; the Live Oak crevasse was 25 miles by water or 15 miles by rail.

Q. Those were all on the west side of the river?

A. Yes sir.

Q. Now, then on the east side?

A. On the east side you had the Bonnet Carre crevasse which was closed, I think, in 1882 or 1884, it ran for nearly ten years, then, or for a number of years, I don't remember exactly how long, then you had the Sauve crevasse which existed about the same time as the Bell crevasse, then you had the Story crevasse below the city, and some crevasses further down. I noticed that in the vicinity—

A Q. The Story and Sauve crevasses were on the east bank?

A. Yes sir, and so was the Bonnet Carre crevasse.

Q. Did any of these crevasses deposit any alluvium in this disputed area?

A. I am going to come to that. I noticed that these crevasses deposited, made deposits only within a radius of a few miles of the crevasses. The grass, the twigs, the foliage generally caught the silt and as the water spread out it deposited all of the silt, so much so, that at the Myrtle Grove crevasse with which I am more familiar than any of the others, as I went through the waters while the crevasse was running and measured the depth of water, that although the crevasse was 1300 feet wide, nearly as wide — the river, flowing with tremendous force, I do not think that any of the silt—it was only 25 miles from there to tide water—I do not think any of the silt escaped over two miles away from the crevasse's mouth.

Q. How was it about the crevasses on the east bank?

A. The crevasses on the east bank, I do not think, from anything I could observe around the Story crevasse, that any of that silt escaped any further distance. Now, I went down in the Bonnet Carre crevasse in 1880, in a boat, and I do not think that the silt went any distance at all. It might have gone as far as the
576 water did, probably ten miles back, but there were no evidences of it at all on the shores of Lake Pontchartrain and that is way 60 miles this side of the disputed territory, 70 miles northwest of the disputed territory.

Q. In these storms which you have described—

A. Excuse me. I was giving you the reasons—I started to give the reasons why, and what effect these storms have had on this territory. I say the first cause is, that these levees are being kept up now and none of this silt at all escapes; it used to escape generally, before the levees were kept up, all along that territory, but none

escapes at all, therefore there is no possibility of these lands being raised. The second reason is, there is a continual decomposition of vegetable matter underlying the top surface or top crust which is all live vegetable matter and the vegetable matter below, dead vegetable matter, and the constant decomposition causes constant disintegration of that vegetable matter. I have taken a dredge and thrown that vegetable matter out on the bank and in two years there was nothing of it left at all. It would absolutely vanish, therefore, I take it, that it is the decaying of the vegetable matter. Then again, there is another pest that for the last 20 years has had a very serious effect. Originally we had a great many alligators, the alligators were supposed to have caught the muskrats; in fact, there is an ordinance of the parish that prevents you shooting alligators because they do catch these muskrats. But recently you see the alligators have been entirely—where there used to be thousands and thousands of them in our bayous, the alligator hunters have killed them all for their skins which are very valuable and to day there are a million muskrats over these prairies that cut the land down, cut all the roots up and at the same time destroy vegetation on the prairies, that you could walk over dry shod almost on account of this crust being so firm; to day if you endeavored to walk over them for miles, you would go up to your arm pits in mud and slush and decomposed destroyed vegetation.

Q. While you are on that point, in addition to the muskrats devouring the vegetable roots and matter—

A. They are herbivorous.

Q. What, if anything else, do they do to this ground to weaken it?

A. They cut holes in our soil, under the soil, very much like a mole does on dry land, so that the water flows in and out through those holes. I have known them to fill canals with the slush and mud that flows out as the water rushes into them. As I was going to say, these terrific storms, as a general rule, came up first from the east, the wind blows from the east, blows in a vortex, but nearly always begins in the east and fills up these countries with tremendous tides.

Q. By what do you mean by these countries?

A. These marshes. The wind then swings around in a vortex, swings from the northwest, that is, blows from the northwest and takes out with a tremendous rush this marsh interior, digs out the interior bays and interior waters, the sea of course falls on account of the northwest winds, very rapidly, it is like water flowing on an inclined plane with the wind behind it, so that it goes to sea, with terrific force. We felt that force in Grand pass just after the storm of 1893. The water swept through that pass with such force that it swept the banks away and undermined Fort Livingston so that the walls fell into the water, that is on Grand Terre island just south of New Orleans. There is a photograph taken of it. (Witness produces photograph.) As I was going to say, this current then swept across these denuded prairies where

this vegetation has all been chopped up, plowed this vegetation up and carried off the surface of these lands and just swept them right out to sea. I have seen patches of floating prairie grass and floating trash, and floating nests of these muskrats larger than this room, swept out. Now, here is the shore between Bay Batiste and Barrataria bay, that was fearfully cut up by the storm of 1893—

By Mr. McCLURG:

Q. Those are places west of the Mississippi river?

A. Yes sir; but the topography of the country is practically the same as far as the lands are concerned, these storms have far more effect where the water is blown across a certain area from one body of water into another, there the water has greater sweep. If the water is blown up against a high bank and remains quiescent, then there is not this fearful current there to bear off this detritus and floating soil and scour holes in the land.

Q. Go on?

A. Now, the country back of Pointe à la Hache on the east bank was also very badly cut up by this storm of October 1893.

By Mr. ZACHARIE:

Q. You have spoken of these holes created in this prairie or marsh land, how deep have you seen these holes and how large in circumference?

A. I have seen holes that would be, well, large ponds, almost the surface would be taken off, denuded, I have seen holes cut, and a number of them are there yet on Grand island south of New Orleans where the storm of 1893, October 1893, swept around obstructions and cut holes in the solid land nearly 20 feet deep like a great bomb shell had exploded there; the beach fronting the sea was terribly cut up so you couldn't pass up and down the beach, but gradually the continual intruding of the waters from the sea has thrown sand up and made the beach like it always was. If you put your head down close to the beach on the sea front of any of these lands, when the wind is blowing in from the sea, you will notice a thin veil of sand moving towards the land all the time, and if you put up a fence or any obstruction you will instantly make a sand mound behind that fence; the waves throw the sand up on the beach, it dries and the winds blow it up into these mounds. I have noticed in trips out to Ship island just at the eastern extremity of the island that there were sand banks there, I think 20 or 30 feet high, blown up there by the winds. But this phenomena does not take place upon the shoreward side of the islands or lands there, the lands are—

Q. When you say shoreward you mean on the northern side?

A. Yes sir. On that part of these islands away from the sea that phenomena does not take place. There there is a systematic
578 erosion going on almost all the time, because the top crust being harder than just underneath, between the blue clay and the top crust—

By Mr. McCLURG :

Q. May I interrupt you to ask you if you are speaking generally or specifically with reference to that erosion going on on the northern side of that coast between Malheureux point and Isle à Pitre ?

A. I spoke generally of these lands, as I have noticed them, over and over again.

Q. You made this statement that there was an erosion going on there all the time. I want to know whether you stated that as a positive fact, or from the general theories you have been discussing in regard to this question—

A. There has been an erosion going on all the time, when there has been any sea or waves. It is a matter of fact and general knowledge that the action of the waves on these lands, these marsh lands, has an erosive effect at all times.

Q. Don't think I am trying to interrupt you, but you made a damaging statement to my side of the question by saying there is a constant erosion going on — that shore, I don't want to interrupt—

A. I say that all along the shore of Lake Pontchartrain which is very similar to the shore along the northern side of this tract of land in question, that there has been a constant erosion going on at all times, so much so that the Northeastern railroad where it crosses over at Lake Pontchartrain there has to build bulkheads to protect this track from the erosion which is constantly going on.

By Mr. ZACHARIE :

Q. How about Lake Borgne ?

A. I say the soil, as far as I can observe, is precisely similar.

Q. How about this northern shore or coast of the territory in dispute, you say you have sailed along there and noticed that, how does that compare, the shore of Lake Borgne and the shore of Lake Pontchartrain ?

A. Of course I have not been along there often enough or made enough comparative observations, but the soil being similar the action of the water the same, I consider that like causes would produce like effects.

Q. Now, have you ever noticed the effects of the storm in the Chinch just immediately adjoining this territory near your brother's former plantation ?

A. I never was there during any of these storms. I only remember the storm of October 1st 1893 because it destroyed down there a club house that I had been—

Q. Did you see any effects of it in the Chinch or this land adjoining your brother's place ?

A. No sir, I did not notice any, I did not notice the effect of that particular storm beyond the destruction of this club house, tearing it all to pieces, and I knew the whole country down there was overflowed, I knew that. I was personally aware of that, but beyond that—you have other witnesses here that are more conversant with that than I am.

579 Cross-examination.

By Mr. McCLURG :

Q. You are a practising attorney, I understand ?

A. Yes sir.

Q. And were district attorney in Saint Bernard parish from 1884 to 1892 ?

A. Yes sir ; I began to practice there in 1881.

Q. I believe Bayou Terre Beuf is the dividing line between those two parishes, the parish of Saint Bernard and the parish of Plaquemines ?

A. Yes sir. It is supposed to be, but I do not think that that line that I know of has been very well delineated. I know that from hearsay.

Q. You are more familiar with the topography and geography and geology of the country south of Bayou Terre Beuf than you — with the country north of it ?

A. Yes sir.

Q. And still more familiar with that portion of the country west of the river than the country east of the river ?

A. Yes sir.

Q. And you spoke of only a few days ago finding those oak stumps ?

A. I didn't say a few days ago. I explained the additional cost of dredging to the board of directors of this company, a few days ago, by saying that oak forests had formerly sunk and that we had to cut right through them.

Q. You attribute the building up of that country along the Mississippi river to the overflows of the river and the deposits that it drops down and throws out on either side ?

A. Yes sir ; of course I think the whole country from Baton Rouge down to the sea is entirely made by deposits of the Mississippi river before we had levees. Of course now, a small amount of water goes out in one of these crevasses, those deposits are made very close to the crevasse because the amount of water that goes out is not near so great as when the whole country was submerged by the water when there were no levees.

Q. And you attribute the sinking of this country to the levees and the decomposition of vegetable matter, alligators, muskrats and the storms ?

A. Not the alligators ; the fact that the alligators have been killed, they used to keep down the muskrats.

Q. The loss of alligators and the increase of muskrats ?

A. The destruction of vegetation on the face of the prairies.

Q. If the levees hold long enough and the decomposition of vegetation continues and the muskrats multiply and the storms go on, that country will be badly off, it will continually sink ?

A. I think so ; but it may not sink so much that a piece of it will not be there about the time we have some further use for it. There.

will be this remedy ; if it should sink so bad, we can take down the levees and let the river deposits fill it up again.

Q. You spoke of Grand pass ; I believe that is the place you had your club house ?

A. No sir, on Grand island we had the Ocean Club hotel there.

Q. That is on the west side of the Mississippi river ?

580

A. Yes sir, 46 miles south of New Orleans.

Q. I asked that because we have a Grand pass over in this territory.

A. Yes sir, that is the pass between——

Q. You do not undertake to speak as a scientist or geologist about these matters, but from personal knowledge only ?

A. Yes sir.

Q. And you cannot undertake to say that there has been no material changes on the coast from Malheureux point to Isle à Pitre, since 1812 or 1817 ?

A. Not from any personal observation at all, and my only statement is as to what effect the storms and various causes have had upon other sections of the district which are similar in soil and bearing the same distinctions as that section of the country there.

Q. That is, you presume it is similar ?

A. I say it is similar because I have seen that the character of the soil is the same.

Q. But, I mean the destruction of the coast line. You do not testify that, as a matter of fact, while your reasoning may hold good in principle yet in fact it may not have had the effect of destroying that coast line from Malheureux point to Isle à Pitre, that is what——

A. I think, if anything, that section of land in question is more liable to destruction from the causes that I have enumerated than the section that we are in, because it is more exposed to the fury of the elements. You have a very large body of water to the northward——

Q. But you do not answer my question. I understand your theories on that proposition, but what I am trying to get you down to is this, as a matter of actual fact can you say that those causes have produced, as a matter of fact, these results, on that shore line from Malheureux point to Isle à Pitre ?

A. No, I cannot. I can only swear that they produced certain effects in the country similar to this country and less exposed to the fury of the elements than this section is.

Q. Have you any idea at what rate that country has sunk down there, at what rate it is sinking ?

A. As far as I can see, since my earliest recollection, I do not think it has sunk more than about 10 or 12 inches, that is, not the front, I don't refer to the front lands, I refer to the rear or swamp lands ; the front lands have not to my observation, where there is hard soil and cultivable lands, sunk at all, that I can see. But the only way that I can tell, from my observation is, by a comparison of the height/

that these lands were above tide water or sea water. Of course we have no tide water or sea water in front to compare it by and it is only the extreme rear that I testify to.

581 JOSEPH C. GILMORE, witness sworn and examined on behalf of the State of Louisiana, testifies as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I reside in New Orleans.

Q. How old a man are you?

A. I am 55.

Q. What is your profession?

A. I am a lawyer.

Q. Are you the owner of Isle à Pitre, or interested in any company that owns Isle à Pitre?

A. I am the owner and with me is interested my brother William and we had organized a company to take possession of the property and develop it along commercial lines.

Q. What is the name of that company?

A. The Louisiana Navigation Company.

Q. Is that company organized under the laws of Louisiana?

A. Yes sir, it is chartered under the laws of Louisiana.

Q. Domiciled in Louisiana?

A. Yes sir, in New Orleans, but we have never been able to go into business in consequence of the property being overrun by fishermen and boats from Biloxi and the Mississippi coast, and also I believe, but more remotely, the Louisiana shore the Lake Pontchartrain end of New Orleans.

Q. Are you the Mr. Joseph C. Gilmore who presented himself at a conference in the month of December 1902 at which Governor Longino of Mississippi and Governor Heard of Louisiana, and the Mississippi and Louisiana Oyster Commissions were present?

A. I am, yes sir, I entered a protest on that occasion.

Q. What was the purpose of your visit at that meeting?

A. It was to prevent our property being thrown into a proposed neutral territory being agreed upon at that time between the Louisiana Commission and the Mississippi Oyster Commission.

Q. Did you make a protest to that assembly?

A. I did make a protest, an emphatic protest on that occasion?

Q. Why did you protest?

A. We had been led to believe that we would be protected against the visits of the Mississippi boatmen and fishermen and it developed that the Mississippi fishermen requested as an additional margin of territory that they should be allowed to take their boats into the inlets or moorings places of Isle à Pitre, to which, of course, we could have had no objection, but later it was proposed to enlarge the

neutral territory and embrace our property within this neutral territory against which we emphatically protested claiming that we had suffered already considerable damage for years by lack of protection, and that we were prevented, in a measure, from obtaining capital to develop the ground and the property properly because protection both from the courts and the police jury was lacking.

Q. Have you ever had occasion, in connection with this Isle à Pitre property, to visit that section?

A. I have had occasion to visit it about eight times I think.

582 Q. When did you first visit it?

A. I first visited it with gentlemen from Pass Christian upon yachting expeditions.

Q. How many years ago?

A. That was about 1881.

Q. When did you last visit it?

A. I could not say exactly what was our last visit; we had been there periodically during the yachting season.

Q. About how long a period of time intervened between your first and last visit?

A. About, I suppose about ten years, but we had visited it in the meantime.

Q. I understand, but did you, or did you not, notice any difference in the topography of the country between the first and last visits?

A. Yes sir.

Q. I am speaking with reference particularly to the property known as Isle à Pitre?

A. Yes sir. It appeared to me to be perfectly safe, in a measure, against sea encroachment inasmuch as it is surrounded almost, in a large measure, by a natural ridge of broken oyster shells which would act, in conjunction with the soil, the mud, clay, putty soil there, as a sort of sea wall I supposed against general encroachment, but in places where there had been anything like a cut made through the land, of course a channel would be apt to make through there as there is constant ebb and flow of the tide there.

Q. Did you observe whether or not there was any change in these cuts?

A. There might have been some imperceptible change in those particular cuts, but it was hardly observable; but the tradition is that these cuts had enlarged from the time they were made, one of them particularly, called Creole gap, had been enlarged from the time it was originally made. A fishing smack named the Creole had gone in on the north shore on an inlet or bight where the distance through the land was short and she had gone up into the land and in order to get her out they dug a ditch on the south side through to the water on the south side and took her through. That is said to be the origin of Creole gap and it was a shoal cut originally and the current made it something of a channel there and widened it, though it is not much of a channel. I had a sloop,

that was the occasion of my going over there as often as I did, I had a 30 foot sloop at Pass Christian and we used to go over there and spend a night or two there, there is a very good harbor there almost from any direction, and going through this Creole gap I have gone aground in there with this boat drawing three feet of water and I observed, one day, aground there, a schooner going by and passed, ostensibly, almost through, but just as she was getting through she went aground, and we got off about 11 o'clock at night, earlier than she did, with the rise of the tide. On another occasion—we often chartered a schooner and went on yachting expeditions—on another occasion we had a party aboard and provided ourselves with three or four sections, I think three sections of gas pipe, in order to make soundings in the land, we had an idea we could find phosphate deposit there; a gentleman from South Carolina had suggested to me, he had been in the phosphate business in the marshes of South Carolina, he said nearly all the phosphate was taken from sea marsh. Originally they had taken it from the river bottom, and he said to me, Mr. Gilmore you ought to find that phosphate in the salt marshes of Louisiana, he did not know that I had any land in the salt marshes of Louisiana, and I said that is very aptly suggested and we will make investigation as we control a body of that description of sea marsh land, and with that object we made these borings, and we had a long handle spade and dug the length of the spade and then bore down with the gas pipe and it was fully 30 feet before we touched anything that was different from the putty like soil, we went through this grassy or fibrous matter and about two layers of oyster shells possibly a distance under the soil of eight feet, then we touched a substance like sand or alluvium, at that depth of about 30 feet, we brought away a box full of the soil and afterwards threw it into a fire and it made up a soft red brick, so it looked like good firm substantial alluvial soil. Then I amused the party by saying here is what we have been looking for right on top of the soil here; there was some huge lumps of concrete matter there and it appeared to us that parties must have been burning lime there. There is a large mound that is a land mark before you see the coast, you see this mound looming up and that mound is a large column of shell work, they had evidently been making concrete in there perhaps during the Civil war with the shell matter they had obtained there, in a pit. We made these borings for awhile and then left, although it was a day in February the mosquitoes were so bad that they drove us out.

Q. What is the top soil on Isle à Pitre?

A. In the places on which we walked, we walked with facility from the shore to this mound which is some distance into the interior of the island, and where there was not a cut the soil appeared to be quite free firm. In places I walked over it there was a slight tide over it covering the soil and yet the soil was so firm so as to hardly sink at all.

Q. Any vegetation on it?

A. Just sea grass, nothing of any consequence except fine prairie grass and sea grass and on this mound are some Spanish needle bushes, a clump, and the island I believe takes its name from that circumstance of Spanish needle growing there.

Q. Will you please look at this sample No. 1 and state whether or not you recognize it to be similar in character to the soil concerning which you have just been testifying?

A. There is vegetation on it, that looks similar to the surface there, that appears to be as near as I can identify it the same soil as on Isle à Pitre.

Q. What do you know about the Louisiana marshes. Do you know anything about the Louisiana marshes southwest of Isle à Pitre, from your personal knowledge?

A. On one of these occasions we went down as far as Point Chico on the coast in Chandeleur sound intending to go through Cubitas gap into the Mississippi river but the weather was very squally and we laid at anchor in a place called Rigolets at Point Chico. My general observation was that this country from Grand pass there on the west of Isle à Pitre around Point Chico was, in a large measure, protected by the immense shell deposit constantly being washed from the bottom of the sea on to the shore there.

584 Q. You are referring now to the eastern shore running south from Isle à Pitre to Point Chico?

A. Yes sir, and Isle à Pitre itself.

Q. Do you know anything about the country from Grand pass westward towards Malheureux point?

A. Nothing except that I have been along there in a boat.

Q. Do you know anything about the interior of the Louisiana marshes?

A. Except that knowing the coast in a large measure to consist if not continuously, in large stretches, of shell matter, the coast would be higher possibly than the interior.

Q. Have you ever been in the interior yourself?

A. No sir, except for a short distance into the bayous there.

Q. How far?

A. We went up a bayou called Bayou Grecque which is south of Isle à Pitre, in the interior, it is shoal at the mouth, but a very fine and deep and wide bayou and I had an idea I saw an immense object up there the day we were out in a yawl; we had not our guns with us and we went back to the schooner. Two or three years afterwards it was ascertained that a whale had been about there and found stranded upon the shoal and I came to the conclusion that I was the only man that had seen that whale alive.

By Judge GUYON:

Q. You spoke of making some borings and going down about 30 feet?

A. Yes sir, 30 feet or more, with a gas pipe.

Q. Was that on Isle à Pitre?

A. Right alongside of the south side of this mound, Indian mound.

Q. On the mound itself?

A. No sir, on the low land south of the mound, so as to get nearer to a deposit of any sort, a lower deposit, that mound I believe is at least three and a half or four feet, apparently, above the country, that looms up at a distance to such an extent that you see it before you see the shore, coming from Pass Christian, with these Spanish daggers growing on it.

Cross-examination.

By Mr. McCLELLAN:

Q. Creole gap as you understand it is an artificial water way?

A. In this sense, that it cuts through, it is; but it was naturally an indentation, I think—

Q. But it did not go clear across until it was cut across?

A. No sir, it did not.

Q. About when was that cut made in it?

A. I could not say. The Biloxi witnesses could testify on that point.

Q. There are several bayous that cut through that coast from the northern shore?

A. Yes sir, natural bayous.

Q. Do you remember the names of them?

A. Well, there is one called Pinton on Isle à Pitre and Bayou Pierre.

585 Q. I mean to the west of Isle à Pitre, Grand pass?

A. Grand pass, I never got beyond Grand pass.

Q. You mean to the west of Grand pass?

A. Yes sir, west of Grand pass.

Q. You are not familiar with the country west of Grand pass?

A. No sir, except from distant observation.

Q. How far was it from Grand pass that you saw the whale?

A. It was just in the bayou, south from Grand pass. It goes by several names. Bayou La Fannier, or Bayou Grecque.

Q. When was your Louisiana Navigation Company organized?

A. I couldn't say the year now, I think about 1893.

Q. About ten years ago?

A. Yes sir. But it never has been completely organized, gone into business on account of not being able to bring this property within commercial development.

Q. The Mississippians claiming rights over there disturbed you?

A. They disturbed us without claiming the right, and we planted oysters there at one time and put up a sign, and the signs were torn down and they put up signs which read plant bigger ones next time.

Q. That is just like a Mississippian?

A. I can't say it was a Mississippian.

Q. What did your sign say?

A. I was not there when they were put up, but a gentleman at Biloxi who owns a piece adjoining there, Mr. Mulholland, he explained to me, I understood from him that was the result.

Q. I mean what was your sign?

A. Oh, my sign read private ownership, private planting ground.

Q. When you made this protest against the agreement entered into between the Mississippi Oyster Commission and the Louisiana Oyster Commission, the governors of the States were not present when the agreement was made, were they, with reference—

A. No, only at this meeting they were present.

Q. This was at a meeting subsequent to the one—

A. You were present, I believe.

Q. They didn't make—

A. We had no notice of the agreement until they made it.

Q. I want to ask you this. Is it not a matter of fact that neither of the governors nor the attorneys general of the two States were present when the two commissions made that agreement with reference to this neutral ground?

A. I don't think they were. I would like to say that we purchased Isle à Pitre from Mr. Henry J. Leovy who was a well known lawyer of New Orleans.

Q. Have you noticed since you have been passing out there, any violent changes in the conformation of that coast?

A. I have not. No, I could not say, I never directed my attention to it. I was not familiar enough with the coast line to mark any changes.

Q. Don't you think that if there had been any violent changes in the conformation of the coast of Isle à Pitre that you would have noticed them?

A. We would have heard of them.

Q. They would have been called to your attention?

A. Yes sir, they would have been called to the public's attention, I think.

Q. And you know nothing of that kind?

A. No sir; I saw little places by the shore where the grass held a piece of this putty like clay that might wash and undermine and let go in places.

586 At this stage of the proceedings, the hearing was adjourned until the 16th day of April 1904, to be resumed at the same place and at the hour of 10.30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 13th, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at same place and at the hour of 10.30 a. m.

Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, att'y gen. of Louisiana.

Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for Louisiana.

Hon. Monroe McClurg, associate counsel for Mississippi.

Captain A. S. Coward, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. Dymond:

Q. Where do you live?

A. I am—for the last ten or 15 years I have lived aboard a schooner, my family live in the city and Bay Saint Louis.

Q. City of New Orleans?

A. Yes sir.

Q. Where were you born?

A. Bay Saint Louis, Mississippi.

Q. How old are you?

A. I am 65 years old.

Q. Did you spend any great part of your life living in Bay Saint Louis, Mississippi?

A. Well, I was educated at the Kentucky Military institute near Frankfort Kentucky, I spent from the time of my birth until I was about —, at Bay Saint Louis.

Q. What is your present occupation?

A. Well, I have been a contractor for the last 15 or 20 years, and latterly I have been putting up some mills, mill right, and now I have quit all that business because it didn't pay, now I am in the oyster business, planting oysters.

Q. Were you ever in the oyster business before?

A. Yes sir, I ran on a schooner about, well, for six or seven years.

Q. About what year, can you identify it, as to the time that you were running on a schooner in the oyster business?

A. Now, in that disputed territory, I have been there off and on, running on a pleasure yacht of mine; I ran down there the first time when I was about 14 years old, in 1853 up to 1857.

Q. Are you acquainted with the territory in dispute in this case between the States of Louisiana and Mississippi?

A. Yes sir; I know every ditch, bayou, and all the waters in that section of the country.

387 Q. When did you first visit that territory?

A. As far as my recollection goes, the first visit I made to that territory was on a goose hunt on what is called Goose point at Cat island, that was in the year 1853.

Q. How old were you then?

A. I was about 14 years of age.

Q. Have you visited that territory frequently since then?

A. Yes sir; I visited it, I spent, you may say, years right in there, I went down there and spent months at a time.

Q. When was the last time you visited this territory?

A. About 1902.

Q. In the years which elapsed between 1853 and 1902 was I, or was I not correct in understanding that you had visited frequently the area in dispute between Louisiana and Mississippi.

A. Yes sir; I have been down there frequently, and not only went on pleasure trips, but in about 1890 I was in Texas in the cotton business and I got hemorrhages out there and I returned to the city here and was examined by a specialist here at the Charity hospital and he told me I had consumption, that my left lung was entirely gone and I could only live four months and I went over to Bay Saint Louis and the physician Dr. Champlain over there couldn't tell me what was the matter with me, but I noticed in the time I was there the more I was out in the open air the better I felt, so I chartered a boat that had a nice cabin on it and everything comfortable and I went out to the islands.

Q. Which islands?

A. All of them, Chandeleur and all through that section of the country, hunting and fishing, and as I was not a millionaire I went into the oyster business, fishing oysters, tongued oysters for four or five years, staid in the marsh, what is called the Louisiana marsh, this disputed territory, I staid there for months, and instead of carrying my oysters to Dunbar's factory I sold them to the freighters.

Q. Are you familiar with the territory from Saint Joseph island as far south as Mosambique point or Point La Fortuna?

A. Yes sir; I know every particle of that country.

Q. When you were a child, did I understand you to say that you had a boat of your own?

A. Yes sir, called the West Wind.

Q. Did you, or did you not, frequently visit that territory as a boy?

A. Yes sir. I laid there in a storm once, during the storm of 1857 when the whole marsh was covered over.

Q. Where did you lie?

A. At Point Nigger, right behind Three Mile bay; I went in Three Mile bayou and went in behind and lay at Point Nigger.

Q. Have you, or have you not had an opportunity of knowing the changes, if any, which have occurred in this section of the country from 1853 to 1902?

A. Yes sir, I have noted the changes.

Q. Will you please start at Saint Joseph island just south of the Mississippi main land and tell us of the various changes which you know to have occurred there on the islands in the Mississippi sound, in the bayous leading from Mississippi sound, into the Louisiana marshes and down through the Louisiana marshes, take it up from 1857?

A. Don't give me this map. I don't require any map. I know it better than a map. I will take it up from 1857, that is, when I used to go, of course, in my early days, I didn't go down there except in the fall of the year to hunt geese and ducks, but after
588 that from 1857 I used to go down fishing and hunting and especially in that country, hunting terrapins; in the month of May we used to go down there and camp right on Half Moon island and get terrapins and then during the gull season we used to go down and get gulls. Half Moon island, in those days, comprised about four acres, between what is called Heron point, they call it Lake Borgne light but it is really Heron light, on Heron bay, between Saint Joe island where the light house then stood and Heron point there was a slough running between there where a boat drawing two and a half and 3 feet of water could go through.

Q. You stated a moment ago about an island having four acres?

A. That was Saint Joe.

Q. You said Half Moon island, you didn't mean to say Half Moon island?

A. No sir; I meant to say Saint Joe island where the lighthouse stood, that was about four acres. Now, as I told you there was a slough between there and where the lighthouse then stood, of course, on Saint Joe island where this four acres was. The difference in that country now, is that Saint Joe island has disappeared, there is no light house there.

Q. When you say it was four acres, do you mean that it was four square acres or four acres long and four acres wide?

A. About four acres in extent, square acres.

Q. And that island has entirely disappeared?

A. Yes sir. There is a beacon built on a shoal which you can see during very low tide, and northwest there is about half an acre of shells that you can see. Now, between Heron point and Saint Joe island, where there used to be this slough there is a mile of water and vessels drawing seven feet can go through there; I went through there drawing five feet many and many a time, that is between where Saint Joe island used to be.

By Mr. McCLURG:

Q. Is that south of Saint Joe?

A. It is due west of Saint Joe.

Q. Going south?

A. This slough—

Q. I mean the deep water was in a due south course west of Saint Joe?

A. This slough runs north and south, runs into what we call Pearl River channel, runs into South pass.

By Mr. DYMOND:

Q. What change, if any, has occurred on Half Moon island?

A. Half Moon island, at that time, I can tell you very particularly about that because I built a little shanty and used to live in it, and Half Moon island, at that time what was called Northeast point, the difference — it, at that time and now, is, that there is at least $\frac{3}{4}$ of a mile of Northeast point gone entirely, where inside of Northeast point there was a shell bank, clam shells, I suppose millions of barrels of shells, that shell bank is entirely gone and the island has, I suppose, lost at least one quarter of its size.

Q. What about Grassy island, has any change occurred there?

A. Grassy island has almost disappeared too; I suppose it has lost two or three acres, that has almost gone.

Q. Any of Grassy island left there?

589 A. Yes sir, some of it. Round island has disappeared entirely except at low tide you can see the top of it. Round island, too, had, at that time, I suppose about an acre and a half in extent and it was high out of the water.

Q. What change, if any, has occurred on Petite Pass island?

A. That island is cut a little. Now, when I first went through Petite pass, that section of the country was a great terrapin country and I visited it very often, staid down there for weeks, and when I first visited Petite pass it was a bayou cut through there I suppose about 25 feet in width, and six or seven feet in depth.

Q. When was that?

A. That was in the years 1857, 1858, 1859.

Q. How wide is that Petite pass now.

A. I suppose it is 150 feet and there is about 18 feet of water there. And at that time there were several islands that had the name of Malheureux islands and they have entirely disappeared, there is not one of those islands there.

Q. Were they in the neighborhood of Petite pass?

A. They were in the neighborhood of Malheureux point, right on the corner of Petite pass, on the Lake Borgne side.

Q. Have you ever sounded the depth of water at the deepest point in Petite pass?

A. I have a map of the survey made by the Fish Hawk in 1899 and some of their depths struck me so that I went over them because I had known that right where they had 8 and 9 feet of water, there was 16 feet, I couldn't reach the bottom with my 16 foot tong, right between Malheureux point and Half Moon island, and I found the depth of water there 18 and 20 feet.

Q. What about Petite pass, I am asking you if you have noticed the depth of water in Petite pass?

A. It runs through there about 7 or 8 feet; in some holes it is ten feet.

Q. If you were shown the United States chart and the United States chart said there was 57 feet of water in Petite pass, would you contradict that statement?

A. Yes sir, I would. I sounded all through that pass and I never found 57 feet of water there. I know there are some holes there. That whole country, you know, is cut up with holes.

Q. If you will look at Petite pass on this map, you will find 27, 52, and 37, 52, being right between the point of Petite Pass island and the main land. Are you prepared to contradict the correctness of that chart?

A. I couldn't do that because I know all the bottom of that place is cut up. Now, you will find seven feet down in the marsh, way in the marsh you will find some places where there is seven feet and you jump right off into 23 and 24 feet. What causes those holes I can't imagine, except they have been cut in there by the action of the waves, storms. When I was sounding in there around 1901 or 1902 when I made those soundings there, why, I might have just made soundings right off from a hole and the Government might have made soundings right in a hole. Now, the same way in Grand pass.

Q. Let us follow in some consecutive order. Will you now follow the coast line from Malheureux point eastward and tell us what changes, if any, have occurred along that coast line beginning nearest Malheureux point?

A. Well, all this coast has been washed considerably. When you strike Nine Mile bayou which is the first main bayou you strike there, Nine Mile bayou has widened considerably, it is about 590 double the width that it was in 1853 and 1857, and there is more of an indentation in there than there was at that time. The coast ran pretty near straight along there and now it is cut in a great deal.

Q. What occurred in regard to Three Mile bayou?

A. That is cut up worse than Nine Mile bayou caused by the action of the northeast storms, especially the northeast storms, it is the one that cuts it out.

Q. What do you mean by cuts it out?

A. It is cut away, the current widens the mouth and cuts away the front. When I used to leave Bay Saint Louis when I got to Southwest bouy where the Pearl River channel strikes Pass Marianne that is one of the channels to the eastward of Pearl river, why we could see, that is a distance of about 15 miles I suppose from Three Mile bayou, we could see the mouth of Three Mile bayou by a large bluff bank of shells, clam shells, we could see it shining white and we would steer by that. Three Mile bayou, I suppose was about 100 feet wide and bluffed on both sides; now that whole bank has disappeared. And inside of Three Mile bayou where they used to be a little slough running up in there there is a deep lagoon and runs nearly out into what we call Half Moon bay. Another storm will

take off the whole front of Three Mile bayou and leave that point only about 50 feet wide whereas it used to be I suppose 300 feet.

Q. What change, in width has occurred in Three Mile bayou?

A. It has widened, I suppose 150 feet to what it used to be, and every vestige of tree and every vestige of high bank has disappeared, there is nothing but a low marsh there.

Q. Coming back for a moment to the Petite pass at Malheureux point, did you ever have any talk with the keeper of the light house at Cat island concerning the tradition in regard to that pass?

A. Yes sir.

Q. Is that party dead with whom you had this talk?

A. Yes sir; he is dead.

Q. What was the tradition concerning this pass which you learned from that party?

A. We were talking about the changes—

Mr. McCLURG: How long ago has he been dead?

A. About 15 or 20 years. That is the lighthouse keeper at Cat island.

Q. When was it you had this conversation?

A. Along about 1858.

By Mr. DYMOND:

Q. What did he tell you at that time?

A. We were talking about the changes around Cat island; he was talking about the changes, he had property on the island you know.

Q. Who was he?

A. He was the lighthouse keeper there.

Q. Was there any incident connected with his history with which you are acquainted?

591 A. His father was the lighthouse keeper there during— well, before the war of 1812, and the British forces they landed there and tried to get him to pilot them to Bayou Bienvenu up in through Lake Borgne and they offered to pay him a big sum to do it and he refused to do it, and on account of that, when the war was over, the Government gave him nearly all of that island and they made him light house keeper until the war of 1861, then his son was lighthouse keeper.

By Mr. McCLURG:

Q. Do you know whether there is any record of that gift, or not?

A. Yes sir; there is a record of it. His name is Cuevas.

Q. Do you know whether there is a record of the history of that transaction?

A. Yes sir; there is a complete record of that whole thing, in the State of Mississippi, everybody knows of it there.

A. I mean a written history?

A. There is in the department at Washington a record of that, a record of the gift; the reason I know that is because there has been

a controversy about some of the land, part of that land was claimed I think by Duggan and there is some controversy about it.

Q. Where was that controversy?

A. I don't know whether it was in Mississippi or in this State.

By Mr. DYMOND:

Q. What was the tradition in regard to this Petite pass?

A. Well, as I was telling you, we were speaking about how the islands were being washed away and disappearing and we were speaking about that country, Half Moon island especially because I had been down there to Half Moon island just before that; he said, well I recollect when there was no cut through Petite pass at all, it was main land all through there.

Mr. McCLURG: Counsel for the State of Mississippi reserves an exception to this testimony because it is hearsay and incompetent, it is a matter of history or a matter which can be proved otherwise than in this manner.

Q. Will you notice the scale of this map No. 17 according to statute miles. Have you noticed that scale?

A. No sir.

A. Well, do you notice it now?

A. Yes sir.

Q. Do you understand that the first section means a mile divided into four quarters?

A. Yes sir.

Q. Will you take this scale and apply it to this Petite pass and state, according to that scale, what is the width of Petite pass?

A. When was this map made, what is the date of this map?

Q. This particular map is the latest one, but whether it contains—

592 A. March 1904; was there any survey made in 1904?

Q. I am not asking you anything about that. I am asking you to measure what this distance is on this chart?

A. It appears to be a little over a quarter of a mile.

Q. According to map 17?

A. Yes sir.

Q. How wide was Petite pass from the northern water edge of the main land to the southern edge of Petite Pass island, the last time you saw it? The distance across?

A. Well, I suppose it was about a quarter of a mile, now, at least in 1902.

Q. And how wide was it when you first saw it?

A. It was a mere bayou when I first saw it.

Q. About how wide?

A. I suppose 75 or 80 feet.

Q. Now, coming eastward along the coast, from Malheureux point to Isle à Pitre, what change did you next notice to have occurred east of Three Mile bayou?

A. Well, more directly east of Three Mile bayou it was a kind of bluff bank, I suppose about five or six feet above mean high tide and at the mouth of Johnson bayou, on the west side of the mouth of Johnson bayou there was another immense shell bank that you could see a distance of five miles of it; we used to steer by that, you know, as a beacon.

Q. Are either of those shell mounds on the east of the mouth of Three Mile bayou or the west—

A. There was no shell mound on the east of Three Mile bayou, there was merely a bank.

Q. Is the bluff bank on the east of the mouth of Three Mile bayou still there?

A. No sir, it has disappeared entirely.

Q. Is the shell mound on the west of the mouth of Johnson bayou still there?

A. No, sir; it has disappeared.

Q. What other changes, progressing eastward did you notice?

A. Well, from Johnson bayou, at the mouth of Turkey bayou, there was another shell bank that has disappeared and the land has, I should judge, and I am pretty good at observing things, I should judge there has at least 50 feet of the main land that has been washed away there.

Q. What change next, progressing eastward did you notice?

A. The next greatest change is right opposite the mouth of Grand pass; there were several shell islands that lay off the mouth of Grand pass, right immediately north of the mouth of Grand pass and coming into Grand pass coming from Bay Saint Louis or Pass Christian, you could not sail directly south, you had to either go down to the westward and run along the marsh up east to get into Grand pass or you had to go down by Creole gap and go down west into it. Immediately in the mouth of Grand pass was a shell island that was about three feet above mean high water and you had to steer to the eastward of that shell island to get in there; you couldn't go between that shell island and the mainland. Now, by the Government chart, which is wrong, there, there is seven or eight feet of water, you can go from Bay Saint Louis, and steer right square, south of it, of where these islands were, and the island in the mouth has entirely disappeared, there is eight feet of water over
593 where that island was; that was a little island in the mouth of Grand pass. Now, on the left of Grand pass, or east of Grand pass, there were three oaks that stood there, Live Oaks, on a mound that Mr. Gilmore spoke about yesterday and when we would come from Bay Saint Louis, when we passed Southwest buoy which is about 12 or 13 miles from there, we didn't steer by the compass at all, we saw those oaks on that rise there and steered by those oaks coming into Grand pass.

Q. When was that, about what year?

A. Those oaks disappeared in the storm of February, I went around to Marshall's to get the date of this storm, Mr. Marshall of

the L. and N. road; it was the time the L. and N. from Michaud to the Rigolets was washed away; it was the only easterly storm we had had in February, to my recollection, it was about 1880. I tried to ask Cline about it, he didn't mention that storm in his report of storms there.

Q. When you say Cline do you refer to Isaac N. Cline the forecast official of the U. S. Weather Bureau, who testified here yesterday?

A. Yes sir.

Q. How does the height of that mound to which you refer compare to day, to what it was when you first saw it?

A. The mound, of course, has disappeared a little, that mound is a kind of concrete, the mound itself and it does not wash like the balance of the marsh has there. The trees have disappeared entirely.

Q. Has it, or has it not, settled any, so far as you have been able to observe?

A. It has settled some, but not as much as the marsh country has, but it has settled some.

Q. What changes, going eastward, did you next observe, if any?

A. Well, all that country has washed some. The only two bayous that I didn't see any change in their width or anything, is Bayou Pierre and Elephant bayou, between Grand pass and Creole gap; they don't appear to have changed entirely; the bay where Bayou Pierre enters into, eastward, has widened and enlarged but the bayou itself appears to be about the same.

Q. What do you know about Creole gap?

A. That has changed entirely. In 1857 Creole gap—there was no Creole gap, it was a lagoon, Creole gap didn't go through at all into the Gulf.

Q. When you speak of a lagoon, did that lagoon completely cross Isle à Pitre at Creole gap?

A. No sir; it was a small indentation; I suppose the distance there, as near as I can recollect, was three or four hundred yards through it to the gulf of Mexico,—from the lagoon to the gulf of Mexico, cutting Isle à Pitre in two.

Q. What is the condition now?

A. There is a regular big channel through there; I have gone through there drawing four feet.

Q. How wide is Creole gap today?

A. Well, the lagoon, the gap of itself is about, I suppose 50 or 75 or 100 feet, that is, the gap, but the lagoon is a kind of bay in there now, it has cut away and washed out a good deal.

Q. Do you know of any other changes which have occurred on this coast line, between Malheureux point and Isle à Pitre?

594 A. Well, both points, the point of Cat island and the point of Isle à Pitre have both washed away considerably, I suppose at least, well, when I first went down to Goose point, that is the most southern point of Cat island, why, there were several big sand

banks there, I suppose 25 or 30 feet in length, we used to make goose blinds there, and I suppose ten or 12 feet above the average part of the island, sand hills had been blown up something like the sand hills of Cat island, 10 or 12 feet above tide level; all of those sand hills have disappeared on Goose point entirely, there is nothing but a level sand point.

Q. Have you ever travelled along, or in the course of your travels had occasion to examine the coast line from Malheureux point to Isle à Pitre, I don't mean at one time?

A. I have been there, I suppose, thousands of times, I have walked it and sailed it.

Q. Is there or is there not a distinct coast line between Malheureux point and Isle à Pitre, south of the Mississippi sound?

A. I tell you Mr. Dymond, when I first walked that marsh you could walk dry shod, except crossing the bayous, from Malheureux point to Grand pass, because, of course, right in behind there was a ring extending along that whole front, of shells and muck from the marshes and you could walk dry shod from Malheureux point to Grand pass except the bayous; but you can't do it now.

Q. How do you know you can't?

A. Because I have been there.

Q. Do you mean to say you could not walk along the coast of that Louisiana marsh, dry shod, now?

A. Not dry shod, not from Malheureux point to Grand pass.

Q. Except for the bayous?

A. The bayous are in the way.

Q. But I mean other than the bayous?

A. Other than the bayous you couldn't do it. I am talking about dry shod; I can walk from there, I admit that, but I could not walk dry shod.

Q. Suppose you were told that a witness was put on the stand who purposely walked from Malheureux point to Isle à Pitre within the last six months, and he testified that he did walk it dry shod, would you be prepared to say that that witness was not telling the truth?

Mr. McCLURG: Counsel for the State of Mississippi objects, because it tends to contradict or support the witness who has previously testified in this case, and he has not been attempted to be impeached.

Q. I desire to add that if you were further told, that this witness whenever he came to a bayou took a skiff and rowed across the bayou in a skiff, would you be prepared to say that that witness did not do what he said he did?

A. I could not tell you under what conditions that was made.

You take this season for instance, we have had an extremely dry season, we have had no rains whatever down in that section of the country. Just like Quarantine bay, I can walk along that bay because we have had no rains, and Bayou Tour-

toilla, Crooked bayou, and Quarantine bay, dry shod; the tide is very low and we have had no rains or anything down there.

Q. Would the ability to walk that dry shod be dependent to any extent on the condition of the tides?

A. Of course, with very low tide why it would affect the place and latterly we have had so much southwest winds and low tide, I notice it down there at our place, we have got the river running through our place, right straight through, we have got our flood gates open all the time, and the water runs from the front back all the time, and generally at this time of the year we have high tides and we have to keep our flood gates behind closed to keep the salt water out.

Q. Is there or is there not a distinct coast line from Malheureux point to Isle à Pitre?

A. Yes sir; there is.

Q. Will you please tell us what changes, if any, you have noticed in the interior of the marsh, south of this coast line?

A. You don't want me to go all around Sundown island?

Q. Yes, go in where you please?

A. I will go right from Grand pass then—

Q. Going in what direction?

A. Going to the south, right outside of Grand pass there are Sundown islands, they have, well in the last 15 years they have decreased, at least, one half their size, that is, immediately to the southeast of Grand pass, and Door point has decreased, that point has washed away considerably.

Q. About how much in length?

A. I suppose 100 feet has gone. You come down to Brush island and that is disappearing entirely; I recollect Brush island when it was an island that stood out of the water, it was filled with what they call mesquite bushes, and it stood out of the water six or seven feet above mean high tide, and it is disappearing entirely, it is only a question of the next storm when it will disappear entirely. You come down to Martin island, that has decreased in size since that storm that I was telling you about, that I was trying to find out the year, in February, and Mitchell key, there used to be a chain of islands down here, there is nothing there now but a shell key, high water covers it entirely, that storm in February cut it entirely to pieces. Now, from Mitchell key in here we strike Drum bay; that bay when I went down there first there was a chain of islands extending nearly across there, you couldn't go into it from the east drawing four feet.

Q. How would you get into Drum bay at that time?

A. We had to go through Three Mile bayou, down through South pass, in through Cat Fish pass and Scow bayou to get into there.

Q. When was that?

A. That was along in 1857, 1858, 1859.

Q. Just proceed with the notation of the changes that have occurred?

A. Now, Drum bay, the quickest way to get into Drum bay, taking it from Bay Saint Louis, we came through Grand pass and come down by Brush island, southward, sail due south and you come in between Martin island and Mitchell keys and you can sail in six or seven feet of water right into Drum bay, that is, now.

Q. Well, will you proceed with the notation of any changes?

596 A. Now, Elephant pass has deepened considerably, I found 25 and 30 feet of water in Elephant pass the last time I was there.

Q. When you speak of Elephant pass you do not refer to Elephant bayou?

A. No sir; here is Elephant pass down here near Mitchell keys, and Elephant bayou is up here.

Q. About how far are these two places from each other?

A. Elephant pass is about 18 miles south, southwest.

Q. What changes have you noted north of Drum bay and more into the interior?

A. Well, nearly all those islands, every island in there has decreased in size.

Q. In where?

A. In this area here, what is called the Louisiana marshes.

Q. In the interior?

A. Yes sir. Coming south from Three Mile bayou a little to the southward of Raccoon island there used to be an island there called Tar island; I am talking about now in 1859, that island has disappeared with the exception of very low tide, the water breaks on it, you know, it shows shoal water there, that used to be a long island. Now, you take Karaho camp, that island has disappeared entirely.

Q. What island is that?

A. It is an island that laid northeast of Little Raccoon island; it is this island you see here, that island has disappeared entirely.

Q. You refer to map No. 7 when you say this island you see here?

A. Yes sir. That is on the west side of West Karako bay, that island has entirely disappeared, you can sail right over it. Now, this island here has disappeared.

Q. What island do you mean?

A. A little island in the eastern part of West Karako bay. There is two feet of water over it at mean high tide. It used to be a shell island that extended up about three or four feet above high water covered with shells.

Q. Has any change occurred in Raccoon island?

A. Raccoon island is smaller. I tell you all these islands are smaller than what they used to be.

Q. That applies as well as what you said about the islands in the interior?

A. Yes sir.

Q. What about Pirate point? Has there been any change in that?

A. Pirate point; not as much change in that. You see it is protected a good deal. Raccoon island protects Pirate point a good deal and the trend of the current is through here instead of around through there.

Q. Through where? Is through where?

A. Between Little Raccoon and Big Raccoon islands running in a direction north out of Three Mile bayou.

Q. Can you mention any other changes that have occurred in this interior section. Have there been any changes in the neighborhood of Treasure bay?

A. Not so much down there. There is one bay here that has changed a good deal, but I don't see it here, Julius bay, and there has been some changes around Morgan harbor, that is to the south-west, way down here; Julius bay you pass through Scow — and come around a chain of islands——

597 Q. We would rather you confine your testimony to changes to the area in dispute, within 18 miles of the Mississippi shore. Has there been any change in the depth of water on the interior of the Louisiana marshes and if so what change?

A. As I tell you, Elephant pass has a greater depth than ever before and you take West Karako bay, coming through this pass here, a channel lies right on this shore, you have to take this shore; in coming from East Karako camp you come into West Karako bay and you have to follow the northern shore to get out of there and that channel has deepened and so has the channel into Johnson bay deepened.

Q. Now, taking the total water area in the Louisiana marshes on the interior side of the shore line extending from Malheureux point to Isle à Pitre, has there or has there not been any change in the average depth of the water in through there and if so what change?

A. Well, in some places the water has shoaled and other places the water has deepened, places where the current is, you know, there is at least seven or eight mile current running through there and the action of the current of course deepens the water; that bottom, I found that bottom except in a few places nothing but soft mud and then you strike a hard clay bottom, but as a general thing it is soft mud. I have gone through there—you take in this bay, opening near Grand pass, Bayou Greque, I have gone into that bayou and the lagoon in front of Bayou Greque, and there was not a particle of water on it and I have had my fore sail and main sail up, wing and wing, and I have sailed through that soft mud with not a particle of water in sight, and got into the deep bayou, leaving a furrow behind me on each side just like a plow.

Q. Have you noticed whether, compared to tide level, there has or has not been any change in the height of the marsh in the interior?

A. I can't say about the interior; I know that the front, that high

ridge along the front is entirely gone, but in the interior I never noticed any sinking of level. I laid there during the storm of 1857 or 1858, I got right in here behind Point Nigger, in Three Mile bayou, and we laid there during that storm, I had one of my nigger men with me, that was before the war and we were down there on a hunt and I was in this yacht called the West Wind and we lay behind that point during that storm and the whole marsh disappeared.

Q. What do you mean by disappeared?

A. It was covered with water.

Q. By water of what depth?

A. I can't tell; we swung around on to the marsh and when that wind shifted to the westward, to keep from being left on top of the marsh when the tide started out, we had to use a pole and shove ourselves off to where the grass disappeared when we knew we were in deep water.

Q. How high was this marsh covered by water during this storm?

A. It was covered, I suppose at least two feet over the top of the grass.

Q. Could you see the grass at all?

A. No sir.

Q. Was that in the day time or night time?

A. It was partly in the night; I think the wind went around to the westward, northwest, about seven o'clock in the morning,
598 the tide commenced running out and the principal part of the blow was in the night.

Q. Did you see the waves during the night?

A. Yes sir, of course, I was up all night.

Q. To what height did those waves attain?

A. Of course inside the marsh the land broke them, they were not the same height as they were outside, I don't suppose the height of the waves was more than 8 or 10 feet.

Q. Could you see any land there as far as the eye could reach, on the occasion of that storm?

A. No sir.

Q. Were you ever down there in any other storm?

A. No sir; I have been in several, what we call blows but never in a storm; I have been out there immediately after storms.

Q. But this was the only storm which you ever went through the experience of lying in the marsh during the storm?

A. Yes sir.

Q. Now, what effect did this storm produce on the topography of this country, so far as you were able to observe?

A. Well, you know, I did not stay long enough down there after this storm, I got home as quick as I could.

Q. Did you ever have occasion to go there shortly afterwards?

A. Yes, sir, I went there shortly afterwards and I noticed there were a great many sloughs cut into the marsh, like little ditches, and I noticed especially at Three Mile bayou the two trees that stood

there had disappeared, that was on the east bank of Three Mile bayou.

Q. Were those oak trees?

A. I don't think they were oak; I think they were mesquite; the only oak tree I know in that section was at the mouth of Grand pass.

Q. Did you have occasion after any other storms to visit the locality and have an opportunity of noting the effect produced by the storms?

A. Yes sir; I have been down there after several storms.

Q. Was there any effect produced, if so, what?

A. Always, I always saw there were changes in the coast line.

Q. What about the interior?

A. Well, the interior had changed but not as much as the front or the north coast line.

Q. Are you familiar with the character of soil, south of the coast line extending from Malheureux point to Isle à Pitre?

A. Well, as far as I have seen, the soil there, it is nothing but blue mud or clay.

Q. How about the surface which is above the water, the crust?

A. The crust, well the condition now is, that the whole front that used to be a kind of little concrete mixed with sand and clay and shells, that has disappeared.

Q. I am not asking you about the coast line; I am asking you about the character of the soil in the marsh?

A. I never saw anything but blue mud, except some of the islands are shell islands.

Q. Any vegetation on the interior marsh?

A. Nothing but marsh grass.

Q. Any vegetation in the soil, are there any roots or anything of that sort in the soil?

599 A. I never saw anything but marsh.

Q. Did you ever notice the marsh grass, does it have any roots in the soil?

A. Of course it has got some roots, it couldn't live without roots.

Q. What was the character of this grass, was it soft and spongy or hard like the front shore line?

A. It was soft.

Q. Was it of a character to have been more or less affected by storms, than the shore line extending from Isle à Pitre to Malheureux point?

A. Of course it is more liable to be washed away than the front because it is softer.

Q. Captain, if you were to sail from Pearl river to the gulf of Mexico, what route would you take; what would be the nearest route from the mouth of Pearl river or the Rigolets to go into the gulf of Mexico?

A. I would go right out of Saint Joe inside of South pass between Isle à Pitre and Cat island, what is called Cat Island pass.

Q. Is that the pass between the Mississippi main land and north of Half Moon island?

A. That is the pass that vessels drawing, well from nine to ten feet of water, that is the only pass they can go through.

Q. Is there or is there not, a channel leading from the mouth of Pearl river or from the mouth of the Rigolets, eastwardly north of Half Moon island through Mississippi sound southeast between Cat island and Isle à Pitre?

A. Yes sir, there is a *boyed* channel there.

Q. Do you know of any other channel between Pearl river and the gulf of Mexico following anywhere through Mississippi sound that would be of equal depth or permit you with equal facility to travel, from the mouth of Pearl river or the mouth of Rigolets to a point in the gulf of Mexico between Isle à Pitre and Cat island?

A. That is the only channel.

Q. Do you know of any channel extending through the Louisiana marshes to a point 18 miles south of the main land of Mississippi, thence eastwardly?

A. There is no channel there.

Q. What would be the average depth of water through the Louisiana marshes, or the maximum depth for any continued route?

A. Taking it at a high tide?

Q. At mean tide?

A. About $3\frac{1}{2}$ feet.

Q. How would that compare with the channel which you have designated as running from the Rigolets or the mouth of Pearl river eastwardly into the gulf of Mexico?

A. I am telling—

Q. I ask you how it would compare; just listen to the question. Read the question. (Question read.)

A. There is a difference of about seven feet between the two.

Q. Have you had occasion during the numerous years with which you are familiar with this locality, to notice the sailing route pursued by vessels coming out of Pearl river and desiring to go into the gulf of Mexico by the nearest route?

A. They will always take South pass.

Q. Will you kindly state what you mean by South pass?
600 A. This is the direct line, we call this pass here at the mouth of Pearl river, at Saint Joe, that has always been called Saint Joe pass.

Q. In order to get that plain; do you refer to the line designated as the line claimed by Louisiana in her original bill of complaint, on the map marked Exhibit E?

A. Yes sir, that is the line I refer to. I will just state that before 1899, I think it is, that the depth of water through here was only six or seven feet commencing about this point here.

Q. What do you mean by this point?

A. Well, the Point Heron, what is called Heron point; and the Government worked on that for a couple of years and they deep-

ened that channel five miles until it struck the regular southwest channel between Cat island and Isle à Pitre.

Q. Let us take the period of time prior to the deepening of the channel, as you have just stated. Was that or was that not the line you have indicated the then deepest channel in use by boats?

A. Yes sir; it was the deepest and nearest channel to the Gulf.

Q. And was it or was it not most used by vessels?

A. It was used by vessels that were going east, to the eastward, and not going to Mobile and in through that section, going outside, what we called outside, always used by those vessels.

Q. Will you please look at this chart marked map No. 17 and state if the line to which you refer is the same line marked C-C-C on this chart?

A. Yes sir, that is the line.

Q. Now, how long has that channel been *bouyed*, to your knowledge and recollection?

A. It was *bouyed* in 1857; I know it was *bouyed* in 1857 and I suppose prior to that; I think it was *bouyed* the time they made the coast survey in 1852 or 1853, I think that is the time they put in the different *bouys* there and *bouyed* that channel.

Q. Has that channel been used continuously since that time?

A. By all large vessels.

Q. Is there any other channel that branches off and goes north-easterly after passing north of Half Moon island?

A. Yes sir; there are two channels, there is a channel from Saint Joe light running up in a northeasterly direction to South Pass *bouy* on the southwest point of the square handkerchief that is in Mississippi sound, and then directly eastward by Merrill's light leaving Merrill's light to the north through Cat Island pass or Pass Marian they call it, and thence if you are going outside, through Ship Island pass, if you are going to Biloxi of course you take the channel in there to Biloxi, there is another channel that leads right in through there to Pass Christian, but vessels can't go in there drawing over seven feet.

Q. Speaking of both of these channels, do they, or not, pass north of Half Moon island?

A. Yes sir; they all pass north of Half Moon island.

Q. Is there any channel in use that passes to the south of Half Moon island?

A. No sir.

Q. Now, this channel that you have referred to as running
601 northeast after it leaves a pass between the Mississippi main land and Half Moon island, is that channel used for the purpose of getting from Pearl river to the gulf of Mexico or is it used for the purpose of going along the Mississippi sound north of Cat island?

A. Well, it is very seldom used. I have known of instances of boats that have loaded at Lookout station at Pearl river to a certain depth there and then gone through the pass to Ship Island harbor

and finished their loading at Ship Island harbor, but invariably if they are loaded they go right out through the channel between what is called Cat Island pass—between Isle à Pitre and Cat island. The other pass is used entirely by boats going to the Mississippi shore and Mobile.

By Mr. ZACHARIE :

Q. Have you mentioned whether you had any connection with any fishermen or oystermen association for the protection—

A. Yes sir, I organized in 1889 the Gulf Fishermen Protective Association. It was organized under the laws of the State of Mississippi.

Q. What was the purpose of it?

A. The purpose was to protect the fish and oysters, to prevent the dredging and destruction of our oyster beds in Mississippi and to prevent the destruction of what you call green trout or black bass in the streams by gill netting and for the purpose of getting the Fish Commission to plant our different streams with fish.

Q. Have you occupied any official position in connection with that association?

A. I was secretary and treasurer of it and am now.

Q. Have you been brought during that time—you have been ever since 1889?

A. Yes sir.

Q. Have you been brought into contact with the oyster fishermen of Mississippi during that time?

A. Yes sir; they generally come to me and make their complaints.

Q. When did you first hear of any claim as to these Louisiana marshes and this disputed territory belonging to Mississippi, being claimed by Mississippi?

A. I can't give you—I have got letters home that I wrote here to the papers from Bay Saint Louis, but—

Q. To the best of your recollection?

A. I think it was about 1885. The oystermen came to me and complained that the dredges of Lopez and Dukate were dredging in Three Mile bayou and Half Moon bay.

Q. Who complained of that?

A. The oystermen came to me and complained.

Q. Oystermen of which State?

A. Of the State of Mississippi, Bay Saint Louis, Mississippi oystermen, and they said the year previous they had destroyed one of the finest oyster banks in Mississippi which is called Grand bank, that lies five miles northeast of Half Moon island, in Mississippi sound, that was in Mississippi territory, that these dredges had destroyed that bank entirely.

Q. Did any of these people claim that any of this territory in dispute belonged to Mississippi?

A. No, they did not claim it, but they claimed they were
602 fishing there and were destroying the oysters.

Q. When did you first hear of this claim?

A. It was after I came to the city of New Orleans.

Q. In what year?

A. I couldn't tell the exact year, it was along between 1885 and 1890.

Q. When did the Mississippi oystermen first commence, to any extent, coming to these waters for oysters?

A. Well, I was a Mississippi oysterman myself, I was one of the pirates that used to go down there and rob Gilmore in Grand pass. I was fishing oysters myself, I was running a schooner myself. When the oysters in Mississippi sound got so scarce they commenced going over there.

Q. About what time was that?

A. That was about 1886 or 1887.

Q. What was their reason for going over there in preference to fishing in their own waters?

A. They reason was they could make a load much quicker.

Q. Did any distance have—

A. Well, the distance of course, it is 23 or 24 miles from Bay Saint Louis down to Three Mile bayou and the oyster reefs in Mississippi sound were only six or seven miles and as long as oysters were there and we could fish them we preferred to go there because there was no risk, if a storm came up we could run right in Bay Saint Louis in an hour or two.

Q. Did the shortness of the distance figure in it?

A. Yes sir, the shortness of the distance had something to do with it.

Q. Can you tell us what was the cause of the extinction of the Mississippi reefs?

A. The cause was I believe, principally, dredging and not culling the oysters. I have seen oysters in the canneries where they would be opened by the shuckers and there would be 25 or 30 oysters that size steamed and killed, instead of dropping them back in the water, instead of culling the oysters and dropping them back in the water. And especially the dredges, they did more of that than the boats did.

Q. In any of your excursions to these marshes or to this disputed territory, did you accompany any body of engineers?

A. No sir.

Q. Were you there, at any time, when engineers were making surveys?

A. I was down there when the Fish Hawk made that survey for the Fish Commission. I had no connection with it; I think that was in 1899.

Q. Will you be kind enough to look at the photograph of the Lafon made in 1806, marked map No. 19, offered by Louisiana, and compare it with the map marked Mississippi Exhibit A and say

which map corresponds most nearly to the condition of that territory when you first saw it?

A. You mean the condition of that inside territory?

Q. Yes?

A. Whether there was a breaking up of land more on this than that?

Q. Yes?

A. Leaving out the distances, why that shows of course a much greater breaking up of land than this.

Q. You do not catch my question. Which one of these maps most correctly or comes nearer representing the condition of this territory when you first saw it?

603 A. Well I should say that this map does; there is more land.

By Mr. ZACHARIE:

(Witness states that the map No. 19 offered by Louisiana being the Lafon map of 1906 comes nearer representing the territory—

A. There is a great discrepancy between both of them.

—when he first saw it, than the map introduced by Mississippi.)

Q. Then you say that map No. 19 offered by the State of Louisiana more correctly represents the territory in dispute as you first saw it, more correctly than the map Exhibit A offered by the State of Mississippi?

A. It more correctly represents the amount of land that was in the marsh at that time.

Q. Now, will you examine the map of 1806 map No. 19, and see whether you can see a bayou on it which runs up from near the southern point of this disputed territory and say if any such bayou exists or existed when you saw it or now?

A. Entering Lake Borgne?

Q. No sir. In this disputed territory. You see those little red marks there?

A. Yes sir, I see this here.

Q. Do you see a little bayou in here?

A. Yes sir; I suppose that is intended to represent Nine Mile bayou.

Q. Now, I am speaking of this bayou here. You see this bayou that runs up from the southern portion of this territory; is there any such bayou there now?

A. No sir, of course not, that country is all open down there now.

Q. You have spoken about deep holes in certain portions of this territory, what do you think they were caused by?

A. They must have been caused by the action of the waves.

Q. Have you any interests in this suit, either pro or con, for either side?

A. I believe that my interests are in favor of the State of Mississippi, at least financially. I would like to see them dredge out and

ruin all their reefs in Mississippi and Louisiana both ; it would make money for me.

By Mr. DYMOND :

Q. Why so ?

A. Well, I am engaged in propagating and cultivating oysters, of course the scarcer the oysters get the higher prices I will get for my oysters.

By Mr. ZACHARIE :

Q. Where are you engaged in that ?

A. On Quarantine bay in Louisiana, Plaquemines parish.

Q. In regard to the enlarging of the mouths of these bayous, what effect on the interior of these marshes would the enlargement of these mouths of the bayous have, especially in storms ?

A. It would tend to make the action of the waters cut away
604 the islands faster, the more open it is the faster they will cut away.

Q. Do you know, by either personal knowledge or by tradition, of any cases in which the Mississippi authorities have refused to take cognizance of crimes or deaths that have occurred in this territory or any portion of it ?

A. I know of two cases, of course it was just—I don't know of it positively, I did not see the dead man, but between 1857 and 1860—

By Mr. McCLURG :

Q. I want to know whether you are going to testify from your own personal knowledge ?

A. I am going to testify what was the general talk and what I heard. I didn't see the dead man.

Q. And you don't know what the refusal to take jurisdiction was, of your own knowledge ?

A. I know what the talk was as to what the refusal was, yes. It was between 1857 and 1860, in the mouth of Grand pass during an Italian holiday, there were three or four luggers gathered up alongside of each other and everybody got to drinking—

Q. Where was that ?

A. In the mouth of Grand pass, what they call the parish of Saint Bernard, and it ended in a fight and one of the dagoes was killed by another one and they went over to Pass Christian in Harrison county Mississippi and tried to get the sheriff to go over and arrest him—

Mr. McCLURG : Counsel for the State of Mississippi excepts to this testimony.

A. —and the sheriff refused to go there. He said that is in the parish of Saint Bernard. And the sheriff from the parish of Saint Bernard arrested the man and he was tried I believe and convicted at Terre Bœuf. And then in another case in the storm of 1893, I

think it was, there was a man drowned on Half Moon island or Grand island I forget which, just across Pearl River pass and they went to Bay Saint Louis to get the coroner to hold an inquest and he refused to do so, he said that is in Louisiana, you go there and hold the inquest. That was the general talk I heard. I know the man that was found, the man that was found was the celebrated Robert Cole that was sent to the penitentiary. He was sent there for robbing stores and he made his escape from the penitentiary in Mississippi and stole a boat and got caught in this storm and drowned right in this boat.

By Mr. ZACHARIE:

Q. Drowned at what point?

A. On Half Moon island. I know the man well because he robbed two or three stores, he robbed on the whole coast there.

Q. When you first visited this territory were there any other islands along the north coast of this disputed territory, these Louisiana marshes?

A. Well, there was a chain of islands that extended from the Mississippi sound opposite Southwest pass, called the Grand Coquille.

Q. I am speaking of the north shore of this disputed territory?

605 A. I don't know of any islands except the islands in front of Grand pass, there were no other islands along there at all, that was all clear, open.

Q. As near as you can judge from your personal observation, to what extent has this northern coast of this disputed territory these Louisiana marshes, receded or advanced since you first knew that territory, about how much?

A. I should judge from 100 to 150 feet the frontage has disappeared.

Q. Is that general, or special at particular points?

A. Well, some points are worse than others. You take the mouth of Nine Mile bayou, that indentation has washed in there more than at the mouth of Johnson bayou.

Q. Has there been any general receding of the coast line?

A. Well, that whole coast line, the whole front there has disappeared; it is back now to the regular marsh.

Q. You were speaking about vessels coming out of Pearl river. There are a great many lumber mills up that river, are there not?

A. Yes sir.

Q. Do you know where that lumber is carried to?

A. It goes to Europe a great deal of it, and a great deal of it goes down to Mexico and Central America.

Q. What sort of vessels are engaged in that trade?

A. Generally, two and three masted schooners.

Q. Drawing about how much water?

A. Now and then brigs. They draw from nine to 12 or 13 feet of water.

Q. How close do these vessels approach to the mouth of Pearl river?

A. Well, some of them go right up the mouth to Pearlington and lay there. Now, I saw a bark there, she loaded outside of the bridge down to about nine feet, she loaded right outside of the bridge at Lookout station at the mouth of Pearl river and I think it was a Spanish bark. And she went outside and finished her loading at Ship Island harbor.

Q. These loads that these vessels take aboard, not going to the mouth of Pearl river, how are these loads or parts of loads carried from the mouth of Pearl river out to them?

A. They are carried in barges towed by steamers.

Q. Do you know what depth, about, these barges and steamers draw?

A. I suppose about six or seven feet loaded.

Q. What channel do these barges travel, these barges that transfer the loads, and these vessels which go up themselves into the mouth of Pearl river, what channel do they take.

A. They generally take the Pass Marianne channel because if you are going to Ship Island harbor that is the nearest channel to take.

Q. And what channel do they take when they come up to Saint Jo island and Grassy island. Is that the main channel you have spoken of?

A. They take the main channel until they get to Saint Joe island, or at least the beacon there, there is no island there now, and then they go northeast through Pass Marianne channel to Ship Island harbor, that is the nearest way to get to Ship island.

Q. I am now speaking of the channel as it approaches the mouth of Pearl river, do they take that same channel north of these islands, that you have described?

606 A. Yes sir, as far as Saint Joe.

Q. You have testified that the map of 1806 shows more nearly the condition of the interior of these marshes than the map Exhibit A offered by the State of Mississippi in connection with the cross examination of Mr. Dukate. If that correctly represents the interior of these marshes, to what cause do you attribute these great changes that have taken place in the interior of these marshes since you first saw those marshes?

A. I attribute it to the storms only, to the violent storms we have been having.

Cross-examination.

By Mr. McCLURG:

Q. If I correctly understand you, Captain Cowand, for half a century you have a general knowledge of this disputed territory on the Mississippi sound?

A. Yes sir.

Q. I will ask you to state what you understand the disputed territory to be?

A. Well, we were talking about that north shore, you know running from Malheureux point to Isle à Pitre, and down southward in the marsh as far as Treasure bay.

Q. You understand the northern boundary of the disputed territory to be the shore line from Malheureux point to Isle à Pitre?

A. Yes sir.

Q. And the boundary line to the south of Martin island?

A. Yes sir, down to Point Chico, is it not.

Q. That is your understanding?

A. Yes sir.

Q. How long have you known Isle à Pitre?

A. Since 1853.

Q. Bound Isle à Pitre?

A. Well, Isle à Pitre is bounded on the north by Cat Island pass and on the eastward by the Gulf and on the westward, well, I have always called that country down there the Grand Coquille, country, that is what we called it, and it is bounded on the south of course by the continuation of the marsh.

Q. Is Grand pass the western water boundary of Isle à Pitre. Look at the map?

A. Well, yes, of course Creole gap you know comes in there, but before Creole gap came in there, Grand pass was the western boundary.

Q. The western boundary of Isle à Pitre?

A. Yes sir.

Q. Isle à Pitre has been a separate and distinct island so long as you have known it?

A. Yes sir.

Q. And has been growing less by the action of the storms and the water?

A. Yes sir.

Q. Do you know what Isle à Pitre means?

A. Well, I have always heard, I have heard my father say—he settled in that country in 1832—when the French first landed on Cat island they saw a great many coons there and they called the island Cat island, they thought the coons were cats, they had never
607 seen a coon, and when they got over to Isle à Pitre the whole shore, it was a sand shore then, and the whole beach was covered with coon tracks and they called it Isle au Pied.

They have got it on a great many maps now as Isle au Pied.

Q. What does Isle au Pied mean?

A. Island of feet.

Q. They saw coon tracks?

A. Yes sir, they saw these coon tracks and they did not know what the island was and they just called it Isle au Pied.

Q. About what time was it, according to your information, whether

by history or tradition, that these names were given to those two islands by the French?

A. It was about the time that Bienville came into the country; it was long before we owned the country.

Q. I believe that has been about 360 years ago?

A. It must have been about that. It was a long time ago; it was before I was born.

Q. Do you not think that Isle à Pitre in 1812 was a separate and distinct island as it is now, but larger?

A. Well, I can't say as far back as 1812.

Q. I ask for your opinion?

A. I have seen such great changes in that marsh by one storm that a storm might from the southward or southeast cut through there, it might have been a hurricane, just like I can tell—

Q. Don't go at great length about it; just answer the question. Read the question. (Question read.)

A. Well I wouldn't like to say that it was an island then.

Q. Isle au Pied named by the French, as you have indicated, pied being tracks; doesn't isle mean island?

A. Yes sir.

Q. Then that means island of tracks then?

A. Yes sir, of course.

Q. And do you not infer from that, that it was an island at the time the French named it?

A. Yes sir, I would have to infer that.

Q. Then can't you say that in your opinion it was an island separate and distinct from all main land in 1812. Answer that question, please sir, direct?

A. I suppose it must have been an island if they called it an island.

Q. The same as Cat island was it not?

A. Yes sir.

Q. I understand you to say that when you first knew Isle à Pitre that Creole gap had not been created entirely across the island?

A. No sir; it was a lagoon then.

Q. But a pass was cut by the Creole from the lagoon into the sound to make—

A. A passage was cut by fishermen.

Q. And that is an artificial pass in part?

A. Yes sir.

Q. So that it seems to be true as I understand the tenor of your testimony in this case and your knowledge of the island, that the island, originally, extended from Grand pass northeast towards Cat island. Is that not true?

A. There have always been two passes, as far as I can recollect, that cut through that island between Grand pass and the northeast point of Isle à Pitre, that ran, that cut right through from the north shore to the Gulf shore, called Bayou Pierre and Elephant bayou.

Q. I will ask you to put your eye on the map No. 17 and tell me

608 whether Isle à Pitre, notwithstanding those bayous, does not extend from Grand pass to the northeast end of it?

A. Yes sir; it did when I first went there.

Q. And that it is a separate and distinct island from all the main land?

A. Leaving out the two bayous, yes.

Q. Please keep your eye on map No. 17 made by the United States Coast and Geodetic Survey, introduced in evidence on the part of Louisiana in this cause, and which I understand to be a combination of official coast charts 190, 191 and 192, and tell me what bayou you find, or water course, going westward from Grand pass; what is the first bayou or water course you find leading out of Mississippi sound southward as you go west from Grand pass?

A. Well, there are several little bayous there, there is only one marked, of any size, marked Drum bayou.

Q. How long have you known Drum bayou?

A. Since 1857.

Q. It was a distinct bayou leading across from Mississippi sound southward, then, was it not?

A. Leading from the front of the marsh southward into the marsh.

Q. Is not Mississippi sound at the front of the marsh?

A. We never called that the sound way down there.

Q. What did you call it?

A. We called it Coquille bay. I suppose it is really a part of the sound down there.

Q. What is the next one leading southward as you travel west?

A. Turkey bayou.

Q. How long have you known that bayou?

A. About the same time.

Q. It has been a distinct water course to your knowledge since that time?

A. Yes sir.

Q. Now then, the next one, please sir, going west?

A. The next one of any size is Johnson bayou.

Q. How long have you known that bayou?

A. The same time.

Q. And the next one?

A. Three Mile bayou.

Q. And the next one?

A. The next one of any size is Nine Mile bayou.

Q. And you have known all those different bayous during the same time?

A. Yes sir.

Q. And Nine Mile bayou is the larger of any of them except Grand pass?

A. Yes, I guess the mouth of it is larger.

Q. Is it not true that at any time during your knowledge of that

coast that water craft of light draft could pass southward through any of those water courses?

A. Yes sir, they could always go southward through them.

By Mr. ZACHARIE :

Q. How far south?

A. Vessels drawing three feet of water came down as far as Morgan harbor, that is about 24 miles down in the marsh, that is about the last oyster bay there is in the marsh, that is about southwest from the entrance of Three Mile bayou, it don't show on this map at all, it is way south of Drum bay; mind you, I am speaking of common tide. In a northwester they couldn't go through at all.

By Mr. McCLURG :

Q. From your first knowledge of Nile Mile bayou, Three Mile bayou, Johnson bayou and Turkey bayou, could not boats of light draft pass to the southward through what you term this marsh country?

A. They could pass through Nine Mile and Three Mile bayous, but not through Johnson or Turkey bayous.

Q. And could pass through Grand pass?

A. Yes sir, they go through Grand pass, you know, go right out into the open Gulf.

Q. And Grand pass separates Isle à Pitre from the marshland?

A. Yes sir.

Q. To the south of Isle à Pitre and to the southeast of Grand pass is the open Gulf?

A. Yes sir.

Q. I understood you to say in answer to questions propounded in chief, that you knew every ditch and bayou in the disputed territory; am I correct about that?

A. I think I did. I have spent months down there.

Q. And if I am not mistaken the substance of your testimony has been to show that these islands from Saint Joseph down through all of the disputed territory have been growing smaller because of these storms and wave actions?

A. Yes sir; that is my opinion, that after every storm they have decreased in size.

Q. They have decreased in size with every storm?

A. Yes sir.

Q. That Saint Joseph island when you first knew it, was much larger?

A. Yes sir, it was about four acres.

Q. Until it passed under the waters?

A. Yes sir.

Q. Then is it not your opinion from your general knowledge of Saint Joseph island and of Grassy island and of Round island and

of Half Moon island, that they were much larger in 1812, than they were when you first knew them?

A. Yes sir.

Q. You have spoken of Raccoon island and Little Raccoon island?

A. Yes sir.

Q. And of *Droked* island?

A. Yes sir.

Q. You know Mud Grass island?

A. Yes sir.

Q. You have spoken of Brush island; I believe you said Brush island was covered with mesquite bushes?

A. Yes sir, it used to be, there are none there now.

Q. And you know Sundown island, Martin island and a great many other islands besides these which I have just named, within this disputed territory?

A. Yes sir.

Q. Are you of the opinion they are smaller now than when you first knew them?

A. I know it.

Q. Are you of the opinion that they are smaller when you first knew them, than in 1812?

610 A. I should judge so.

Q. You spoke of there being trees on some of these islands. My recollection, that along Three Mile bayou you spoke of some trees?

A. Yes sir, those trees existed there since 1850 to some extent. They were there in 1857.

Q. And have disappeared?

A. Yes sir.

Q. Do you not believe, Captain, that the same influences that have been reducing those islands, removing those trees, within your knowledge, the same influences existed prior to your knowledge and had the same effect upon those trees?

A. I think so.

Q. Do you not believe that these islands, all of them, within this disputed territory, were more distant in 1812 than they were in 1850?

A. My belief is—

Q. Just answer my question; listen to the question; I want you to give me a straight answer to a straight question?

By Mr. ZACHARIE: Answer, Mr. Witness, yes or no and then explain.

Mr. McCLURG: I object to the witness being instructed.

Q. Read the question. (Question read.)

A. I believe so, yes.

Q. Then they were, as you have stated, more distinct in 1850 than now?

A. Yes sir.

Q. What do you understand to be an island?

A. It is a body of land entirely surrounded by water.

Q. And that is what you understand these islands that we have been designating, to be?

A. The reason I mentioned those two bayous there, it seems to me that Isle à Pitre would end about Elephant bayou, because the cuts it entirely through. Elephant bayou and Bayou Pierre always ran there, they cut it off from Grand pass, so we have always called Isle à Pitre extending from *from* the point opposite Cat Island *part* to Elephant bayou.

Q. Then what do you call west of Elephant bayou?

A. The marsh.

Q. You never considered that Isle à Pitre went west of Elephant bayou?

A. No sir.

Q. How large a bayou is Elephant bayou?

A. It is one of the only bayous in that marsh, it and Bayou Pierre that I see no changes in except directly at the mouth; it has not widened nor grown any smaller. Now, Elephant bayou is a very crooked bayou through there, and it is about, I suppose 25 to 30 feet in width, it is a small bayou but pretty deep; there are one or two oyster reefs going through it where the water is shoal, but a boat drawing three and a half feet in common high tide can go through there.

Q. You have never answered my question; how large it is?

A. I say about 25 to 30 feet in width; and Bayou Pierre
611 about the same thing.

Q. That bayou is between Elephant bayou and Grand pass?

A. Yes sir.

Q. What do you call that country between Elephant bayou and Bayou Pierre; is that an island?

A. We always called it part of the Louisiana marsh.

Q. Between Bayou Pierre and Grand pass?

A. The same thing.

Q. In going south through Nine Mile bayou, in a vessel of any kind, you first go into False Mouth bay?

A. Yes sir.

Q. And then bearing to the westward where would you next go in a most southerly direction?

A. We very seldom have taken Nine Mile bayou on account of it not being as direct as Three Mile bayou; of course we go in through False Mouth bay, into Indian Mound bay, into Treasure bay.

Q. Well, in coming out of False Mouth bay to the southward and westward, could you get into Lake Eugenie?

A. We could drawing about 2½ feet or three feet of water, going through this chain of lakes.

Q. Do you know where Lake of the Mound is?

A. Yes sir; I know where it is.

Q. Can you reach Lake of the Mound with a craft of light draft through Nine Mile bayou, and if so, how?

A. Well, we go through Nine Mile bayou about, well, due south until we get to Mud island and then we cross to the eastward through Dutchman's pass, then we start through Indian Mound bay going to the northward of a chain of islands in Indian Mound bay, and then we start southward through Cat Fish pass going into Cat Fish pass we go into Southwest pass and around in through this pass into Lake of the Mound. But it is a country where oysters are very scarce and I have never been down there except on hunting expeditions, and I have been down there two or three times and that was the route I always took because there is deeper water that way than any other way.

Q. You spoke, in your examination in chief, of having taken refuge at Nigger point?

A. Yes sir.

Q. When was that?

A. That was in 1858, I think.

Q. How did you get into that point?

A. Well, I was fishing oysters right there at the mouth of Three Mile bayou; there used to be the finest oysters in the country there, and it commenced to blow very heavily, from the northeast and I saw by my barometer that we were about to have a blow and I had a nigger man there with me, there were two of us together on there on a hunting and fishing expedition and we hoisted sail and went in there behind Nigger point, to the eastward of Nigger point, and laid there during that gale. I think it was Friday night we got in there, the gale lasted all day Saturday and cleared up Sunday morning from the northwest; it commenced from the northeast and shifted east and then southeast.

Q. I believe you said it was the lighthouse keeper on Cat island that you talked with in 1858?

A. Yes sir, 1857 or 1858.

Q. And he was the son of the former lighthouse keeper?

A. Yes sir.

612 Q. And he spoke of the constant washing away of the island?

A. Yes sir.

Q. And that island was smaller when you talked with him in 1858 than it was in 1812?

A. We were speaking of the washing away of the end of Cat island where the lighthouse stood and he told me when he first came there he said the island extended out two miles to the westward of where the lighthouse is. Now, there is deep water between the woods and the island; that whole point is gone. I had a brother that was lighthouse keeper there for six or seven years.

Q. I don't remember exactly when it was you said that east of Three Mile bayou there was a bank five or six feet high there. When was that that you first noticed that condition?

A. That bank remained there up to that February storm; that is the only storm we ever had in February; it was about 1880; and that storm cut up that marsh and destroyed the shell front; why even at my place at Bay Saint Louis it took away a solid clay front 15 feet high, and live oak trees known to be 100 years old were washed away; it just washed the solid bank right up to the shell road; it was a most cutting storm; that was the storm you know when the L. & N. from Michaud was washed away; it was in 1880 I think.

Q. Prior to that storm, you say there were trees on that island that must have been 100 years old?

A. I couldn't say that because you know a live oak in that marsh don't grow like on the main land; they were scrub trees, you couldn't tell anything about their age; but the oldest fishermen in that country knew them.

Q. There were to the eastward of Three Mile bayou?

A. These oaks that we steered by, there were three oaks that stood to the east of the mouth of Grand pass; the next clump of trees between Grand pass and Three Mile bayou stood right here at Three Mile bayou, at the entrance of Three Mile bayou.

Q. And they have disappeared?

A. Yes sir. And here was an immense shell bank at the west side of Three Mile bayou, and at the west side of Johnson bayou there was another shell bank, up here. We would go by—when we got to the southwest buoy in Pass Marianne which is about eight or nine miles off, we used to steer in daylight by those shells, they showed up in the light, they were eight or nine feet high.

Q. Have you ever known of the time when you could not pass with a boat of light draft, southward, through Three Mile bayou, Three Mile bay, down through between Big and Little Raccoon islands and down through Indian Mound bay to the southward passing out southwest through Cat Fish pass into Southwest pass?

A. We could always go down there, but by a very tortuous route. Now we can go directly, start south and pass through between Raccoon island and Crooked — and go through Indian Mound bay, down in through Cat Fish pass into Southwest pass and go down into Drum bay and California bay. But years ago we had to start from Three Mile bayou and pass between Little Raccoon island and Nigger point, hugging the north shore of the marsh until we got to the land separating West Karako from East Karako, and then south down Cranetown bay and then we steered southwest through Southwest pass to get down to this country. There was an island there that don't show on this map, that was called Dog island, about $\frac{3}{4}$ of a mile long and about 60 feet in length, the only sign of that

613 island is that at low tide you can see the waves break on it, there is about six inches of water on it in low tide. It don't show on this map at all, but I know it is there because I camped on it and shot gulls on it; I ran aground on it at night and staid there three days.

Q. Pirate point is at the south end of an island?

A. Yes sir.

Q. What island is that?

A. I never heard any name for it. Some people call it Nine Mile island; some people call it Pirate island. You can go with a very small boat in through here into Nine Mile bayou, in through between Pirate point and this part of the marsh here; those are all parts of the marsh, they are not designated as island. Where one was entirely surrounded by water like Raccoon island you call it an island.

Q. You can sail around it?

A. Yes sir.

Q. What is this South bayou?

A. It is really a bay, it is nothing but a lagoon, there are a few scattering oysters in there; I suppose there is a foot and a half of water there with a mud bottom.

Q. I understand you to say to counsel, that there were holes to be found in all of this territory under the water; is that true?

A. Yes sir.

Q. And that these holes were constantly changing; is that correct?

A. Well, I can't say they are constantly changing. Now, there is a hole that is right in the eastern part of West Karako bay, about a quarter of a mile from the eastern shore; there is an oyster reef, what we call a dry reef, where there is 2½ feet to 3 feet of water and it is hard bottom like cement, and in 15 feet of that you can jump off into a hole 10 or 20 feet deep with a soft mud bottom. And that lies right south of Johnson bay.

Q. You can come out of Johnson bay?

A. You can in a light draft boat.

Q. Into Johnson bayou and into the Mississippi sound north?

A. Yes sir.

Q. So, then, I understand your observations to have been, and your belief is, that at the bottom of the waters in the territory about which we are now speaking, changes have occurred as well as at the surface above the water?

A. You mean that the channel changes?

Q. Yes?

A. Yes sir, the channel does change.

Q. Where the channel was yesterday it may not be today?

A. I do not say it would change in a day, but I say the channels change during a storm; I know that; I ran through one channel before a storm and a week or two weeks afterwards in going through I found a difference of two feet of water.

Q. Anyhow, these convulsions are transpiring under the water as well as above?

A. The currents and waves act on the bottom to a great extent, as well as up on the surface.

Q. What is your opinion as to the formation of these shell banks which you speak of, at Three Mile bayou and Johnson bayou?

A. My idea is that those shells were thrown up there during some violent hurricane.

Q. How long ago you have no idea?

A. No sir. My idea about this country is——

614 Q. Never mind that. I have not asked you about your idea about the country.

At this stage of the proceedings the commissioner adjourned the hearing for recess to be resumed again at the same place at 2.15 p. m. same day.

Resumption of Proceedings.

2.15 P. M.

Pursuant to adjournment for recess and all parties being present the hearing was resumed at the hour of 2.15 p. m. at the same place and date.

Cross-examination of Capt. A. S. COWARD resumed.

By Mr. McCLURG :

Q. When we adjourned for the noon hour, Captain, I understood you to say that you were of the opinion that the shell banks of which we had been speaking, were thrown up there by some action of the water?

A. Yes sir.

Q. But as to the time of such action you have no information?

A. None whatever.

Q. Then are we to understand from that that there was a time when the coast was created by the action of the waters in throwing up shells and silt and sand and other substances?

A. Well, I think that ring along the immediate coast was formed——

Q. Listen to the question and answer that. Read the question. (Question read.)

A. No ; I do not think that coast was created that way.

Q. Do you think that coast was ever extended or heightened by shells or any other substance being landed upon it by the action of the waters, either in storm or by the usual——

A. You speak about the immediate front of it?

Q. Don't answer until I get through—ebb and flow of the tide?

A. Immediately in front of the coast.

Q. I mean the general coast from Malheureux point to the north-east point of Isle à Pitre?

A. Well, I was once, I think it was at the mouth of Turkey bayou, either Johnson bayou or Turkey bayou, we came out and it was after this first shell bank disappeared there, and we ran over to

Bay Saint Louis, and there was a storm occurred while we were lying in the bay, and when we went back there again there was a shell bank thrown up on the west shore of this bayou.

Q. Which bayou?

A. Either Turkey or Johnson bayou, I don't know which; they were in the immediate vicinity of the bayou and must have been six or seven schooner loads of white clam shells and they were carried away shortly afterwards by schooners and brought to the city here. It is evident that the waters do throw up shells from the bay, that is where those clam shells came from.

Q. What bay?

A. So-called Mississippi sound; the bottom of Mississippi sound is full of those clam shells and the action of the waves threw them up on the shore.

Q. Is it not a fact, and I ask it because of your long personal experience in the Mississippi sound, that while the action of the waters sometimes take away portions of the coast, that they do also make deposits along that coast?

A. They do in certain places. It depends on—now, in Bay Saint Louis there right next to me, there is a man who has built out a traverse, a board traverse in the bay and every time the wind is from the east and southeast the sand will build up along there, schooner loads and schooner loads of sand he sells from that place that was thrown there by the action of the waves.

Q. Where is that?

A. Right in Bay Saint Louis. And I have seen the same thing happen at Point Clear just this side of Half Moon island.

Q. I am asking you about the coast between Malheureux point and Isle à Pitre?

A. Nothing of the kind happened there.

Q. May it not have happened because of the influence of which you speak, without your personal knowledge, within the last 50 years?

A. No sir; I would have seen it if it had happened then; schooner men observe those things very closely, nothing of that kind passes their observation.

Q. I believe you stated to counsel for Louisiana, that in your best judgment, there had been an invasion of the coast between Malheureux point and Isle à Pitre of about 150 feet, within your own knowledge; am I correct?

A. At certain points. That was right under my observation.

Q. You do not undertake to say that that erosion has been continuous from Malheureux point to Isle à Pitre?

A. After every storm. It has only been observable after storms. After every storm this erosion is observable to anybody that was there before the storm and then came down there after the storm.

Q. My question was intended to reach from Malheureux point to Isle à Pitre as a general proposition?

A. Well I am speaking of that north shore.

Q. So I am.

A. From Malheureux point to Isle à Pitre.

Q. Let me put the question this way. You have stated that you have had general knowledge of the coast line from Malheureux point to Isle à Pitre for half a century. Now, I want to ask you this question. Has there been within that time any general marked erosion of the line between those two points?

A. Yes sir, there has.

Q. At what places?

A. Well, principally at Malheureux point, at the mouth of Nine Mile bayou, at Johnson bayou, Turkey bayou, the mouth of Grand pass.

Q. And those erosions have been the widening of those places?

A. The widening and the cutting away of the front.

Q. That is the sum total then of the important changes that have been made within half a century?

616 A. On the front, yes sir.

Q. You are reasonably certain of that are you?

A. That is all the change I have seen made.

Q. All the changes you have seen made?

A. Yes sir.

Q. When you said there had been 150 feet take-away you refer to those points?

A. Yes sir, because they came directly under my observation, because I did not notice the rest of the shore, but the washing continued the whole shore; of course the mouths of these bayous on account of the rapid current the washing away is greater.

Q. Those rapid currents are governed by the water passing southward out of Mississippi sound?

A. Well, both ways.

Q. The current flows both ways?

A. Yes sir.

Q. You mean the ebb and flow of the tide through those bayous?

A. When the easterly storm is blowing there is a strong flow, and nearly all these storms within my knowledge, the storms of 1852 and 1853, they have all cleared up from the northward and the easterly wind has banked the waters up and a heavy current runs in and then when the wind changes there is naturally a very rapid decline of the waters by the wind shifting and there is a current created of a velocity I suppose of ten miles an hour through those bayous.

Q. You think that has caused the widening of the bayous?

A. It has caused a cutting away of the bayous, a widening of them.

Q. The matter that is cut away by those influences where do you think it has been deposited, where has it rested?

A. I couldn't tell that.

Q. Did the current take it out into the Gulf?

A. It is impossible for me to say where the current took it.

Q. When did you first begin to fish oysters in the Louisiana marshes?

A. I fished oysters there in 1857, I guess that was the first.

Q. At what point?

Q. Right at Three Mile bayou.

Q. Did you fish any south of that, in 1857?

A. Yes, sir; I fished down as far as Drum bay, about nine miles south.

Q. You found oysters at all of these places marked in red on the Fish Hawk map filed with the original bill in this case, did you not, in 1857?

A. No sir, I did not.

Q. How far you say you fished, down as far as Drum bay?

A. Yes sir.

Q. Did you find oysters down there then?

A. Some few in Drum bay.

Q. Examine those points indicated on the Fish Hawk map by red markings and say where you found oysters in 1857?

A. You want me to commence at Three Mile bayou?

Q. Yes.

A. Well, immediately in the mouth of Three Mile bayou on the west side there was at that time a fine bank of oysters there which has entirely disappeared now, it is not there now. Running south along this shore between Point Nigger and Three Mile bayou
617 there was a reef running along that whole shore, of oysters.

Q. For what distance?

A. The reef was about a mile long, and it was something like a ridge, narrow, you know, about 12 or 13 feet in width. There were oysters here between Nigger point and Raccoon island, between Crooked island and Mud island, Indian Mound bay had oysters in there, they are all around Indian Mound bay at the present time, in Indian Mound bay around the edges of the island, they are scattered, not in large reefs but scattered oysters. Now, coming down to Cat Fish pass there were oysters all through there.

Q. In 1853?

A. No sir, 1857. I don't pretend that I fished oysters in 1853.

Q. Pay strict attention to my question and it will save a good deal of trouble.

Q. In 1857 I said I fished oysters; I went down there in 1853 hunting.

Q. I want to know where you found oysters when you first went down to look for them?

A. We found oysters scattered all through there, not in great quantities, in Southwest pass, Drum bay.

Q. That was when?

A. In 1857. Of course those banks have all increased, there are more oysters there in certain sections; in East and West Karako bay there are no oysters whatever over there now; same way in California bay. Now, down by Mitchell keys the oysters here have all

disappeared; Brush island used to be a big bank there, that reef has disappeared entirely.

Q. How about oysters in Cat Fish pass in 1857?

A. There were oysters there.

Q. How far is Cat Fish pass where it goes into Southwest pass, directly south of the first touch of the Mississippi shore?

A. Well, from Henderson point at Bay Saint Louis it is about 33 miles.

Q. Is that the nearest point directly north?

A. That is pretty near square north from Henderson point to Cat Fish pass.

Q. To the first touch of the Mississippi shore?

A. Yes sir.

Q. That stretch you say—

A. Is pretty near 33 miles; we call it 23 miles from the bridge at Bay Saint Louis to Three Mile bayou, and ten miles down; of course we never measured it but that is what we call it.

Q. Let us come back up here towards Creole gap. I see there are some markings there indicating oyster beds along the north shore of Isle à Pitre?

A. Yes sir.

Q. How did you find them in 1857?

A. Scattering oysters, very few. Now, right here on the North point, what is called south shore flats, that was Isle à Pitre oyster bank, that extended three miles in length and two miles in width, that was destroyed in about 1880 by the Conchs and it never has grown up.

Q. That is not considered now a very valuable oyster territory?

A. Well, this is here, from Creole gap extending south.

Q. Through the gap?

618 A. Through the gap and along the shore to the westward is all good oyster land.

Q. Is not that territory about the northward mouth of Creole gap considered one of the best oyster territories within the territory in dispute between these two States?

A. As to quality of oysters or quantity?

Q. I didn't say which. You can fix the answer like you please. Just answer the question in your own way, you understand. I don't mean to be—

A. I can say I never fished oysters on these reefs in my life. I have fished three winters steady in Grand pass on account of the fine quality of the oysters there, but these oysters were small oysters and fit only for steaming, on Creole gap. Grand pass has one of the finest oyster countries in the world, that pass through there.

Q. And to the westward of that there are large quantities of small oysters fit for canning?

A. Yes sir, that is about all. You go right in Creole gap and you find around in the mud some very fine oysters, that grow in bunches,

but they are very scattering, it don't pay a man to sell them, you get only 30 cents a barrel for steam oysters.

Q. Let us get back over here towards Malheureux point. Notice around Petite Pass island to the eastward, how are they there?

A. There are fine oysters there, what is called the Half Moon oysters.

Q. Immediately further to the east, the map seems to indicate a long reef?

A. There is a big reef here three miles in extent, some of the finest oysters in Mississippi sound are here directly between Three Mile bayou and Half Moon island, about five miles between the two places.

Q. I am trying to keep you to the west of Nine Mile bayou.

A. Here we are to the west.

Q. How is it between Nine Mile bayou and Petite pass?

A. On the shore?

Q. Where it is indicated on the Fish Hawk map that there are oyster beds?

A. There are only two places, we have already spoken of those two places, they are very good oysters.

Q. When I asked you about this place west of Nine Mile bayou you got way over here at Three Mile bayou where the map does not indicate any. I notice right north of Petite Pass island between that and Round island an indication of an oyster reef?

A. Yes sir, there is a reef there.

Q. What about that?

A. There is all about the same quality of oysters, large round oysters, fine oysters.

Q. As to quantity?

A. As to quantity, it is a very small reef.

Q. Let us travel a little further towards the mouth of Pearl river, I see the map indicates up here in the neighborhood of Grassy island and Half Moon island oyster beds?

A. Oysters all over there.

Q. And between there and Point Clear lots of oysters in there?

A. Lots of oysters all around those islands. This bay here between these two points, Half Moon bay they call it, between the southeast point of Half Moon Island and the northwest point of—

619 Q. Is it not true that between Point Clear on the Mississippi shore down to Malheureux point, for a distance extending as far east as Nine Mile bayou and to the eastern side of Half Moon island, that that is a territory rich in oysters?

A. Yes sir. It is a good oyster territory as long as Pearl river don't come into it. Every oyster was killed on that reef five years ago by the fresh water of Pearl river.

Q. Is it not true that those oysters were killed by the overflow from the Mississippi river and not Pearl river?

A. No sir; this time the Mississippi river was not overflowed; it

was from water out of Pearl river, and all the oysters was killed at Bay Saint Louis by the overflow of the Jordan river, they had three months of steady rain.

Q. At any rate when they are not killed by the overflow from Pearl river they are all right.

A. They are good oysters.

Q. And the oystermen like that territory, it is profitable.

A. Yes sir, it is a good oyster territory.

Q. And all of that territory is in dispute in this controversy?

A. I believe so; is this where you claim, from here?

Q. You said you knew where it was when you started out—

A. I heard it was from Malheureux point to Point Chico; but I see on this map—

Q. You didn't say anything about hearing it; you said you knew every inch—

A. I am talking about what has been claimed

Q. I am talking about what you know?

Q. I know there are oysters there, I fished them myself and they are fine oysters.

Q. Is it not true that it was the dredging introduced by Lonez and Dukate that first brought up the question as to whether these oyster gatherers were in Mississippi territory or in Louisiana territory?

A. That is my belief; of course I don't know positively.

Q. And that was introduced about when?

A. It was just after the survey that the Fish Hawk made there, she made a survey in 1899.

Q. It was just after that?

A. Yes sir, it was about 1899 or 1900.

Q. That this dredging was introduced?

A. The first I heard of it and the dispute about the line.

Q. Up to that time you had been a Mississippi oysterman?

A. Yes sir.

Q. And you had fished in all this disputed territory for oysters?

A. Yes sir.

Q. And you did so believing that you were in Mississippi territory?

A. No.

Q. Did you do it—

A. I knew, at least, to the best of my belief I knew that I was in Louisiana territory; but there was no law in Louisiana at that time prohibiting me fishing there, and all the boats from our section of the country went there and fished oysters and of course I followed them.

Q. You never asked any question about State lines, did you?

A. Never any word about State lines.

Q. You did not intend to violate any law in fishing in Louisiana, did you, as a Mississippian?

620 A. I think I quit fishing since they passed the law.

Q. I did not ask you that at all?

A. No, I had no intention of violating the law.

Q. You did not intend to violate any law of rights?

A. No sir.

Q. Did you believe, as a Mississippian, that it was right for you to go into Louisiana territory and take oysters regardless of whether there was a prohibitory law?

A. At that time the Louisiana fishermen were fishing oysters in Mississippi territory.

Q. Let me ask you this plain and square, was there ever before 1889 or 1890, any question raised as to where the State line was?

A. I never heard any question raised.

Q. How on earth can you tell us then, that you regarded it as Louisiana territory?

A. Because all my life I always heard that the deep water channel from the mouth of Pearl river out through Southwest pass into what is called Cat Island pass between Isle à Pitre and Cat island, that it was the division line between the two States. I heard that and never heard it disputed.

Q. Just tell us the name of a single man that ever told you such stuff as that.

— — —

By Mr. DYMOND:

Q. Did you say from the mouth of the Mississippi river or Pearl river?

A. Pearl river.

By Mr. McCLURG:

Q. Tell the name of —

A. I never heard any one ever dispute it.

Q. Answer my question. You say that you have regarded all this time, this deep water channel as the dividing line between Louisiana and Mississippi?

A. Yes sir, all my life, I always heard it stated, I have heard my forefathers speak of it.

Q. Which one of your forefathers?

A. My father.

Q. Did your grandfather ever say anything to you about it?

A. My grandfather lived in Virginia, he never happened to come South.

Q. You had some talk with the counsel for the State of Louisiana in this case since adjournment did you not?

A. No sir.

Q. You have not heard said a word to any of them about it?

A. I have not.

Q. When we adjourned, didn't I leave you in consultation with the counsel for the State of Louisiana?

A. No sir; I went right out and got my lunch.

Q. Examining maps in this case?

A. No sir, I went right out and got my lunch.

Q. Your interest, I understand would be, financially, on the Mississippi side?

A. Yes sir.

621 Q. You live in New Orleans?

A. Yes sir.

Q. And have lived here for how long?

A. I have lived here off and on all my life.

Q. What do you mean by off and on?

A. We have a place at Bay Saint Louis, sometimes I would live there and sometimes here. I have for the last five or six years, I have been nearly entirely here, at least my family have resided in New Orleans. Now and then they go over to the bay. As to myself I am here very little.

Q. Did you ever read the act of Congress admitting the State of Mississippi into the Federal Union?

A. No sir.

Q. Did you ever read the act of Congress admitting the State of Louisiana into the Federal Union?

A. I have read synopsis from it in the paper, but I never read the act itself.

Q. Did you ever read the statutes of the State of Mississippi undertaking to define her boundary line?

A. No sir.

Q. Did you ever read the statutes of the State of Louisiana, or her constitution undertaking to define her boundary line?

A. No sir.

Q. So in saying that you regarded the deep water channel as the boundary line of the two States, that was just your own idea about it?

A. No sir, it was not my own idea.

Q. What was your idea about the dividing line of the boundary between the two States?

A. It was the opinion of every one.

Q. I asked you what was your idea about it. You said you never read the laws or the acts of Congress admitting the States or the constitutions of the States; now, I want to know what was your idea based upon?

A. It was based upon the talk of the general public. Whenever they spoke of this disputed territory they spoke of it as the Louisiana marshes, Mississippians did. I can bring you 20 Mississippians, members of Congress, who have always called that the Louisiana marsh and always said that the dividing line was from the mouth of Pearl river out through Cat Island pass.

Q. Twenty members of Congress said that?

A. No sir, some of them were members of Congress.

Q. Name a man that told you that.

Q. They have always spoken of it as the dividing line.

Q. I want you to tell me what member of Congress ever said to

you that that was the dividing line between the two States, just give me one out of the 20?

A. They have always spoken of it.

Q. Well, they, who do you mean by they. Listen to me Captain, I don't want to be captious but you are on precious ground now and I must know your authority if you have it. And to warn you against it, I am going to inquire of the man that you give me to see whether he was committing himself intelligently.

A. I am trying to think of the man's name now. I think he is on the school board there now, he is a member of Congress. But I can't recall his name.

622 Q. Don't you think you are mistaken about the fact, that you have spoken hastily because of my rashness?

A. No sir. I don't think there is a man in that section of the country, that ever mentioned that country that did not call it the Louisiana shore; I never did.

Q. Call it the Louisiana marshes you mean?

A. Yes sir, the Louisiana marshes.

Q. Now, speaking to you patiently about it. You have often heard of the Mississippi sound?

A. Yes sir.

Q. And that reaches right down to the mouth of Nine Mile bayou and Three Mile bayou and Turkey bayou and Grand pass and right along that shore, does it not? If you give to Louisiana that territory simply because it has been called the Louisiana marshes, ought you not to give Mississippi that sound because it has been called Mississippi sound?

A. I don't see that that follows.

Q. Why does it not follow; because the Louisiana marshes—

A. Well, the name of the sound was a name just like Pearl river, it was given to that body of water as a sound and called Mississippi sound because most of it was along the shore of the State of Mississippi.

Q. But it does not belong to Mississippi because it is named that?

A. No sir. I don't think the whole sound; neither does all of Pearl river belong — Mississippi, only half of Pearl river belongs to Mississippi and only half of the Mississippi—

Q. Have you not got what you call Florida parishes?

A. Yes sir.

Q. Do they belong to Florida because they are called Florida parishes?

A. No sir.

Q. I do not want you to be led off from my inquiry by these generalities; that is what I am striving against, and when you say that it is generally understood that this deep water channel has been the dividing line, you speak generally. Now, then, I want to hold you as close as I can to the proposition: that the law fixes the lines between States and not the talk of the general public. And

you say you have not read any constitution or statute or article on that subject?

A. I always thought, until this controversy came up, that on account of that channel being bouyed, it had been bouyed by the Government and marked out as a dividing line there, that was always my supposition.

Q. You are an old sailor and captain of your schooner and the like of that. On these Government maps is not that channel marked as the sailing channel from the mouth of Pearl river into the gulf of Mexico, a sailing channel?

A. I don't know that I ever noticed that; I noticed the bouys and have from time to time examined the difference between the charts and the actual depth of water, made soundings through there, but I never on any map noticed whether it said that; I have got a map of 1890.

Q. Who made that map?

A. The Coast Survey made it, it don't say on that sailing channel.

Q. Have you examined the maps introduced in evidence by the State of Louisiana, in this case?

A. No sir.

623 Q. You are not prepared to say that on one of the prominent maps seeking to establish that deep water channel as the dividing line, that it is marked as a sailing channel?

A. I have not seen that map.

Q. And you have not heard the witnesses testify in this case that it was put there for navigation purposes and in no instance has it been intended to mark a line between those two States?

A. I heard one witness testify to that, a Government witness.

Q. Now, then coming back to you as a practical man interested in both States, do you not think that that deep water channel was put there by the Federal Government for navigation and commercial purposes, rather than as marking the line the dividing boundary line between the two States?

A. I have been told since by Government officers that is what those bouys were placed there for.

Q. For what?

A. To mark the channel, depth of water.

Q. For what purpose?

A. For marking the channel and depth of water for vessels going through it.

Q. For navigation purposes?

A. Yes sir.

Q. And not to undertake to fix the boundary line between these two States?

A. That is what I have been told, yes.

Q. I want to thoroughly understand you, Captain. When you were taking oysters down south of this line running around the coast from Malheureux point to Isle à Pitre, and when you were

anchored at Nigger point to save yourself from that storm and on down to West Karabo and Indian Mound, that far, was there ever at that time any mention of the locality of the boundary line between these two States?

A. I never heard of any.

Q. That dredging business sprung that question?

A. That is the first I heard of any dispute.

Q. Mississippi allowed it under certain conditions and Louisiana made it a felony?

A. Yes sir.

Q. And that was comparatively of recent years?

A. Yes sir. I think it was right after the Fish Hawk survey. I was down there when the Fish Hawk made that survey.

Q. When you stated that you were a Mississippi pirate on the lands of Mr. Gilmore, you meant that that was since this controversy arose as to where this land was, did you not?

A. I spoke in general terms, because I met Mr. Gilmore when I came to the city and he said I heard you have been down there stealing my oysters and he said you are a regular Mississippi pirate. But, I don't think, as far as I can recollect that I have fished oysters in the marsh since the passage of that oyster law.

Q. You have been afraid to do it?

A. No sir, I was not afraid, but I don't care about risking my schooner and risking my own individual liberty at it, as far as being any wrong about it.

Q. If that is the distinction I will accept it. You commenced going into the marshes, I understood you to say about 1886 or 1887?

624 A. No sir; I first went down there in 1857.

Q. For oysters?

A. Yes sir, after oysters.

Q. And from the Mississippi shore?

A. From Bay Saint Louis.

Q. It may be that you stated that the oystermen began to go down there in the marshes about 1886 or 1887, because of the p-verty of the reefs that you had been previously fishing on, you were looking for new fields. Is that correct?

A. Yes sir.

Q. And you found them there more abundant, down in the marshes?

A. Yes sir.

Q. And I mean by that, those places indicated by the red markings on the Fish Hawk map, down in the marshes?

A. Yes sir, all through that section.

Q. And you went down in there on schooners?

A. There were two reasons that made us go down there, the first was we could load a schooner with 200 or 300 barrels, they generally carrying four hundred barrels on a schooner, and we could get a load of 200 or 300 barrels in a day and a half or two days, whereas

on the Mississippi reefs the oysters got scarce and it took us a week to get that load; then another consideration was safety, we could lay in there just like a harbor with perfect safety and we could fish no matter how rough it was outside; but up here on the reefs on the Mississippi sound, every time the wind crept to the east or northeast we would have to up anchor and sail into Bay Saint Louis for harbor, quit the reefs and lay there and maybe lose a day waiting for the wind to go down. Those were the two considerations that made us go down in the marshes to fish oysters; then we got a finer oyster too.

Q. You have stated in answer to the question by counsel for Louisiana, that the map of 1806 more clearly exhibits that coast as you first knew it, than the map exhibited with Mr. Dukate's testimony and marked Exhibit A presented by the State of Mississippi. And if I am not mistaken your reason for stating that was, that the map A with Mr. Dukate's testimony, shows, on its face, more water in this disputed territory than the photograph of map Exhibit No. 19, map of 1806, filed by the State of Louisiana. I understand that that is a mere opinion which you arrived at from an observation of these maps and a comparison of one with the other. I do not understand that you undertake to testify to the correctness of either map?

A. No; I am speaking about the difference between the two maps, as to the quantity of land that is in there. As to the lines and correctness of the maps there, I can't say anything about.

Q. Now, Captain, listen to this question, please, and I have no doubt you will testify honestly and correctly according to your judgment about it. You testified that these islands and these shore lines are constantly disintegrating because of the action of the storms and waves constantly beating against their shores; that is correct?

A. That is correct.

Q. And for that same reason they are being washed away and some of them entirely gone and some submerged, and that in your judgment the bottom under these waters *ungoes* changes the same as the land at the surface of the water. I think you have
625 stated your belief that—

A. I think there is a disintegration of those lands all the time, greater in storms of course; but I do not think that there is much change at the bottom of the waters there except during storms; I think the storms and the rapid current created by the storms makes those holes I spoke about and makes the changes of channels.

Q. In other words you are more familiar with the surface changes than you are with the bottoms?

A. No sir; I have to be familiar with the bottom changes there too. I have to go through that marsh with a sounding pole.

Q. Do you undertake to say you are as familiar with the bottoms as you are with the surface?

A. Very near. I never have gone through that marsh that I didn't have to have a sounding pole and I found constant changes.

Q. And that these islands, where there were once trees, have been decreasing and the trees have been swept away?

A. Well, as I told you once before, the only trees, as far as my recollection extends, down in that part of the country, were at the mouth of Grand pass, at the mouth of Three Mile bayou, and there were three scrub trees on Mud Grass island; those are the only trees I have any recollection of.

Q. They are gone?

A. Yes sir, all of them.

Q. And you said something about some mesquite bushes that were on Brush island?

A. Those all gone; Brush island is gradually disappearing.

Q. You spoke of an Italian being murdered at Creole gap in 1857 or at some time between that date and 1860. Your knowledge of that is purely tradition. You have no personal knowledge of it; it is purely tradition?

A. I did not see the man killed, nor I was not there; but it was common talk around the place you know.

Q. You never read anything in any book about it?

A. I can't say that I read it in the paper.

Q. I asked you if you read it in any book?

A. No sir.

Q. And you never read it in any court record, you never read anything about it in any court record?

A. No sir.

A. *No sir.*

Q. It was just common talk?

A. That was all.

Q. And therefore tradition. You do not undertake to vouch for its truth under your oath?

A. No sir; I wouldn't swear to the truth of it; I didn't mention it as anything I could swear to.

Q. You know we are pretty touchy over on this side and we have to find out the true facts. Now, you said the robber Cole that escaped from the Mississippi penitentiary was drowned down there by—

A. By the storm in 1890 I think it was.

Q. Where?

A. It was either on Half Moon island or Grassy island the body was found.

Q. You know that of your personal knowledge to be a fact that he was drowned there?

626 A. I heard it from the man who found the boat and took the body out of the boat, I didn't see it.

Q. You wouldn't swear it was so?

A. I saw the boat.

Q. Did you see the man?

A. No sir.

Q. Could you swear it was Cole?

A. No sir, I couldn't swear that because I didn't see him.

Q. Are you willing to swear that was Cole that was drowned?

A. No sir.

Q. And you are just going by hearsay about that fact?

A. I didn't tell it as a fact, positive fact; I told you I heard it.

Q. I want to make the record clear on that point. I am trying to find out what your knowledge is, what knowledge you have separated from general hearsay.

A. That was only common talk.

Q. And we are not always willing to swear that common talk is the truth, are we?

A. No sir.

Q. You said that the Mississippi coroner refused to hold an inquest over the body. That was common talk too?

A. Yes sir, I was told that by the owner of the boat.

Q. Are you willing to swear of your own knowledge, as a witness on the stand, that a coroner from the State of Mississippi refused to take jurisdiction of the dead body of Mr. Cole?

A. No sir.

Q. And you only say because it was common talk?

A. Yes sir.

Q. We can't afford, you understand, to settle a court question like a controversy between two sovereign States by common talk. That is the reason I want to get you to the point. So, then, so far as the question of jurisdiction is concerned you are not prepared to state anything of your own knowledge or information?

A. No sir.

Q. And so far as the location of the actual line between the two States is concerned, speaking from your own observation for the last half century, if you were called upon to go and put your finger on the line between these two States as it was intended to be put by Congress when they admitted these States into the Union, you couldn't do it?

A. I couldn't, because I don't know what Congress intended.

Q. That is what we are trying to get at?

A. That dividing line is only—my opinion of that dividing line is only from the talk of every one; of course I have no positive knowledge.

Q. You don't want to leave the question as to whether you own property or not to common talk?

A. No sir.

Q. We don't want to leave that question about the oyster beds to common talk either.

Q. It will not be decided by common talk.

Q. You stated you were in the neighborhood of the Fish Hawk when she was making these soundings down there?

A. No ; I said I was down in the marsh when she was down there making those soundings.

Q. You took no part in it ?

A. No sir.

627 Q. I understand you to say that your soundings did not agree with the soundings of the Fish Hawk in some respects ?

A. In some places.

Q. And the Fish Hawk was only there once, and they made those general soundings on one visit ?

A. Yes, sir ; she made one visit, that I know of.

Q. And you sounded along there in fishing for oysters during a chain of continuous years, did you not ?

A. Yes sir.

Q. You discovered that the Fish Hawk had made some mistakes about it ?

A. I discovered it, yes, sir, and I attribute it not through any mistakes the Fish Hawk made, between Half Moon island and Grassy island——

Q. And the oysters were pretty rich there ?

A. Yes, sir, the oysters were rich. Why she has got places marked 10, 14 feet, depth of water there ; well it is easy enough you know, on account, as I told you, the bottom is in ridges, you might put your sounding pole down and find nine feet of water, and then ten feet further you will find 18 feet of water ; and it might have been that in making these soundings she happened to hit on a shallow spot and I happened to hit in a hole.

Q. At all events you are prepared to state that the report made by the Fish Hawk is not perfectly accurate ?

A. It is as accurate as possible, as far as they found the depths.

Q. Did it correspond with the soundings you made ?

A. No sir.

Q. And the soundings you made were of a greater depth than those reported by the Fish Hawk ?

A. Yes sir.

Q. Tell me about these two channels, the one that goes up to Biloxi and the one that goes out into the Gulf out of the Rigolets and the mouth of Pearl river ? They are called deep water channels, as I understand it, because vessels drawing as I understand you to say, nine or ten feet could not get too far away from that channel, deep water channel. Now, is it not true that lighter draft vessels could pass over Mississippi sound most anywhere between the Mississippi shore from Biloxi westward to the mouth of Pearl river, extending down to the northern coast between Malheureux point and Isle à Pitre ?

A. Do you want to know the route they take ?

Q. I want to know if vessels of light draft could not pass over that sound or that water ?

A. In a straight line ?

Q. In any direction ?

A. No sir; they cannot pass; they have to follow the channel; there is on the Square Handkerchief that lies directly north of Pass Marianne where there is only a foot of water.

Q. Where is that?

A. On the Square Handkerchief. You hav-'nt got a map of 1890 have you. This has it on. It is shown by the combination map No. 17. Now, in coming from Biloxi you have to go up through Pass Marianne channel north of Cat island; they come here to what is called Southwest bay; now, from Southwest bay they don't have to take the channel, they go right across and go down to Malheureux point. If they don't go this way, through Pass Marianne, they take the inshore, Pass Christian channel, and they go down south west to the Bay Saint Louis bridge and then they can
628 sail directly down to Malheureux point in six feet of water.

Those are the two routes they generally take. In Grand Coquille there is only half a foot of water and that is immediately—

Q. That is immediately northwest of Isle à Pitre, north of the east end of Isle à Pitre?

A. Yes sir. Now a person that is well acquainted with this country, say myself, I can go out of Grand pass and I know the channel between these keys, and instead of me sailing way over to the westward and then going about northeast to strike Bay Saint Louis, I can pass through these keys and there is a cut through there ten feet, between the Square Handkerchief and this Pass Christian oyster reef, and cut right into Pass Christian channel, and I save then about five miles going around the Square Handkerchief. But it takes a person that is well acquainted to go through there.

Q. According to your knowledge and information within the last half century, how long have these Mississippi people been going down below the line between Malheureux point and Isle à Pitre into what you term the Louisiana marshes, to get oysters?

A. Well, they never did to any extent go down there to fish oysters. Now and then a boat would go down there to get very fine oysters and go down to get a few oysters, principally private boats, may be get four or five barrels to take home and throw under their wharf.

Q. How long has that been going on.

A. That is what first took me down there in 1857. I was not fishing oysters for profit, I just went down on a pleasure boat and I think it was about 1880, along about 1880 that the boats fishing oysters first commenced to go down there in any quantity.

Q. The canneries commenced their operations about 1880, do you mean to say?

A. No; I say that about 1880 the oystermen first commenced to go down in this country to any great number, to any extent.

Q. What do you mean by this country?

A. This disputed territory, below the north shore in the Louisiana marsh.

Q. What part of Mississippi did you say you lived in?

A. Bay Saint Louis.

Q. That is the place you were born ?

A. Yes sir.

Q. I understand you to say that you were in Drum bay in 1857 and that you got there through Three Mile bayou with a boat of four feet draft. Please tell us how you made that trip ?

A. From the mouth of Three Mile bayou ?

Q. You are testifying now from Exhibit Map No. 17 ?

A. From the mouth of Three Mile bayou, we started across what is called Three Mile bay, passing between Little Racoon and Big Racoon islands, between Crooked island and Wild Goose island, down Indian Mound bay to the southwest through Cat Fish pass into Southwest pass into Drum bay, through this deep water pass. There is another deep water pass just like Cat Fish pass, 18 or 20 feet deep, I have forgotten the name of it.

Q. Do you observe from the map before you, the combination map, substantially the same route that you made in 1857 ?

A. You mean to say that I see no changes in it ?

Q. Yes.

629 A. I see a great many changes. There is an island here that was called Dog island.

Q. Dog island is gone ?

A. Yes, sir, it is gone entirely.

Q. But I meant to ask you this; the line that you have given me from Three Mile bayou down to Drum bay you have marked out on the map now before you ?

A. Yes sir.

Q. And from this map you find the route you went in 1857; I am not asking you about the changes.

A. I can find it by that map.

Q. How is this territory that you call the marshes, east of the main shore of Saint Bernard parish, with reference to habitations; is there any animal or industrial life of any kind across there except these coons you spoke of this morning ?

A. Coon- are the only living thing I know of down there.

Q. There is no industrial life of any kind from Saint Bernard parish out to the northeast point of Isle à Pitre ?

A. Not that I know of.

Q. You have never seen any farm or manufactory or anything except fishing in that territory, have you ?

A. That is all I have seen, fishing and hunting.

Q. There is no industrial life of any kind other than oyster fishing ?

A. That is all I know of fishing and oystering.

Q. When you spoke of going dry shod, you meant between the bayous that cut the shore southward, going dry shod from Malheureux point to Isle à Pitre, you meant of course that you would have to be carried around the mouths of the bayous ?

A. Of course I had to cross the mouths of these bayous.

Q. They were clearly defined, so far as your recollection goes back, that is to say, Nine Mile bayou, Three Mile bayou, Johnson bayou, and Turkey bayou, Grand pass, all of those places, have been clearly defined streams or bayous since you have known that coast?

A. Yes sir, they have all been there.

Redirect examination.

By Mr. DYMOND :

Q. For what purpose do people go into the Louisiana marshes?

A. Principally fishing oysters.

Q. In your opinion, have you had occasion to notice the routes which are used in going into the Louisiana marshes for this purpose?

A. Yes sir.

Q. How does the use of Nine Mile bayou compare to Three Mile bayou as to the number of boats going through these two bayous for oyster purposes?

A. I suppose that the vessels passing through Three Mile bayou is at least 30 or 40 times greater than those passing through Nine Mile bayou.

Q. Is it, or not, a fact that Nine Mile bayou is very infrequently used?

A. Yes sir.

Q. Are you able to state the character of vessels that are used in fishing oysters on the inside of the Louisiana marshes?

630 A. There are generally schooners and luggers; a great many small barges, schooner barges, that will carry from 80 to 100 barrels of oysters, drawing about six to eight inches of water.

Q. How do they deliver, how do these boats you have just described deliver their loads?

A. They deliver them to freighters lying in the mouth of Three Mile bayou.

Q. How much draft do these freighters have?

A. Well, loaded, about five feet, five and a half feet.

Q. Why do these freighters lie in Three Mile bayou, why don't they go further in?

A. Because there is only three and a half feet in most of the channels.

Q. Is it, or not, a fact that owing to the shallowness of the water inside of the Louisiana marshes, that the fishing of oysters is done there by comparatively shallow draft boats which deliver their cargoes to freighters lying in the deep water channel of Three Mile bayou?

A. That is a fact.

Q. Now, you have spoken on cross examination in regard to what you believe as the conditions existing in 1812, and you started a moment ago to give your ideas about the country. Will you give your ideas about what this country was in 1812?

A. I did not pretend to say what the state of the country was in 1812; but I intended to state that my idea was and belief, that that whole marsh at one time was a part of the main shore of Louisiana from what I had seen and observed; it was only an opinion of mine, that that originally was a part of the main shore of Louisiana, as I believe that Cat island was once a part of Mississippi.

Q. Was that opinion formed in any way by the observations that you yourself had made and the results that you yourself had seen extending from 1857 up to 1901?

A. It was formed by those observations.

Q. If the same results had been operating from 1812 to 1857, that you saw operating from 1857 to 1901, what in your opinion would have been the condition of the country in 1812, in a general way?

A. Well, I think the condition would have been, there would have been much more ground there than there is now.

Q. And less water?

A. And less water.

Q. Was there or was there not, much more ground when you first saw this area, known as the Louisiana marshes, in 1857, than there was in 1901?

A. A great deal more.

Q. Would you, or would you not, be prepared to say that these bodies of land which you have denominated as islands in 1901 were islands in 1812 in the interior?

A. No; I couldn't say they were islands then?

Q. What would you think they were then?

A. Well, I should judge they were a part of the main land, especially as far as that point, from Julis pass and Morgan harbor, in through that country, the marsh is not as much cut up down there as it is further in front; the nearer to the front you go to the Gulf shore of that marsh the more the land is cut up.

Q. You, on cross examination, testified in regard to changes which you stated had occurred below the water and in the channels just as changes had occurred above the surface; were your remarks

631 intended to apply to the conditions and changes in the Louisiana marshes south of the line extending from Malheureux point to Isle à Pitre, or were they applied to the open Mississippi sound.

A. It was inside of the marsh.

Q. Did or did not what you said, as to changes in the channels, have any reference to the open Mississippi sound?

A. The only change of channel that I know of in the upper sound—

Q. No; I asked, did what you stated have—

A. You can apply it to both. The changes in the channels have been greater in the marsh than the outside, but there have been changes outside.

Q. Has there been any material change in the sound north of the Louisiana marshes due to any cause of nature?

A. The only channel that I know of that has changed from the cause of nature is that channel between old Saint Joe light and Heron point.

Q. Has that any thing to do with the main channel extending from the mouth of Pearl river out through Southwest pass between Cat island and Isle à Pitre?

A. No sir.

Q. Have you known any changes due to nature which have occurred along this line marked C-C-C on map No. 17, extending from the mouth of Pearl river out through Southwest pass between Cat island and Isle à Pitre?

A. No sir; I know of no changes there except those caused by dredging of the Government north of Pearl river, no natural changes there, none in South pass, that is what we call South pass.

Q. Now, when did you stop fishing oysters, Captain, in the Louisiana marshes?

A. I think it was in 1901.

Q. In your many years' experience in the Louisiana marshes, did you ever have occasion to have the subject come up in conversation with any of the fishermen as to what State the Louisiana marshes belonged?

Mr. McCLURG: I object to that emphatically. This question is not to be settled by a discussion of Louisiana marsh fishermen.

A. I had conversations with fishermen from both States, Louisiana fishermen and Mississippi fishermen; of course the Mississippi fishermen claimed it as Mississippi territory and the Louisiana fishermen claimed it as Louisiana territory.

Q. Since what date?

A. That was along about the time this controversy came up, about 1900.

Q. Now, prior to that time, had you ever had any conversation wherein the matter came up?

A. No sir; I never had the matter to come up until this controversy was sprung. I do not think I ever heard it questioned until right after the Fish Hawk made that survey and those dredges fishing in Three Mile bayou and Half Moon bay was reported.

Q. Are you able from your experience to say what name was given this territory commonly known as the Louisiana marshes, by the Mississippi fishermen?

632

A. Louisiana marshes.

Q. I asked if you are able to say what name was given it by the Mississippi fishermen?

A. Yes sir.

Q. What name was given to this territory by the Mississippi fishermen?

A. They always called it the Louisiana marshes.

Q. Did you ever hear it called by any other name?

A. No sir.

Q. What do you call the area immediately north of this coast line running from Malheureux point to Isle à Pitre?

A. We always called, from Malheureux point until about half way between Nine Mile bayou and Three Mile bayou, as Half Moon bay.

Q. What do you call the water area east of that.

A. South of what is called Grand Coquille, used to call it Coquille bay.

Q. What do you call the large body of water between the bodies of water you have just mentioned, and the north main line shore of the State of Mississippi?

A. We call it Mississippi sound. That is, from Half Moon island.

Q. Do you know why the Florida parishes were ever called Florida parishes?

A. I suppose they were originally a part of Florida.

Q. Is that why you understand they were so called?

A. Yes sir.

Q. Will you please look at this map marked No. 17 and follow along the line indicated in a black line between the points C-C-C and state whether you see there the words "sailing line" at any point?

A. No sir, it is not on that map.

Q. Will you look on the line which extends from the channel between Half Moon island and Point Clear, in a northwesterly direction, thence running easterly, parallel to the coast of Mississippi and state whether you see the words "sailing line" on that line?

A. No sir; it is not there.

Q. Did you ever see a house at the mouth of Three Mile bayou?

A. There was a little fisherman's hut there about eight feet square, built of blocks but it staid there a very short time.

Q. Are you prepared to say whether there is or is not now, a store built at the mouth of Three Mile bayou, erected by Aaron and Wenzel?

A. No sir.

Q. Have you ever seen that building?

A. It was not there the last time I was there. They have a schooner there and kept their store in a schooner, sold out of the schooner.

Q. The last time you were there was in 1901?

A. Yes sir, and 1902.

Q. Have you seen the building of Mr. McGraw and Mr. Charles Sanger at the mouth of Turkey bayou?

A. Yes sir; I have been there often in it.

Q. Have you ever seen the building of Mr. George Ruppel at Door Point lagoon?

A. There are only some shanties down there near Cranetown pass and near Door Point bay; I never stopped in there, you know we always passed to the southward of that.

633

Q. Have you seen the recent building put up there?

A. No sir, no recent building. Those fishermen huts that there were several of them through the marsh, I never pretended call them houses, some of them had nothing but thatched roofs.

Recross-examination.

By Mr. McClung:

Q. Please look at the chart or map Exhibit E filed by the State of Louisiana in this case and tell me how far it is from the mouth of Pearl river, to the point where the north channel east of Saint Joseph lighthouse branches off towards Biloxi?

A. I think it is about, I should judge about three miles from the mouth of Pearl river to where we generally strike off just outside Saint Joe island.

Q. Is there any point between the mouth of Pearl river and the point designated on this map or chart before you, where this deep water channel is as far as 18 miles from the Mississippi shore in you get out to Ship island south of Ship island?

A. You mean running south?

Q. This line between the Mississippi shore—

A. Where is Cat island?

Q. Here it is.

A. That is nine miles from Pass Christian, Cat Island lighthouse is.

Q. How far is it from Gulfport due south to this line called deep water line?

A. I suppose 18 or 20 miles.

Q. Do you know when the Mississippi sound first got its name?

A. No sir; I couldn't tell, it was named that as far back as 1833.

Q. Why do you fix it at 1833?

A. My father settled in Mississippi, at least he bought a place there about in 1833 and it was called Mississippi sound; then Lake Borgne had the same name, so the different bays have the same name, the Rigolets had the same name.

Q. I understand you to say on re-direct examination that in your opinion this territory that we now called the marshes, was in 1812 more solid than it is now?

Q. That is my belief.

Q. Am I mistaken in believing that you also said that these islands were more distinct in 1812 than they are now?

A. Yes sir; and there were more of them in 1857 than there are now.

Q. I did not ask you a thing in the world about 1857?

A. I know positively there are fewer islands and less ground now than in 1857. How can I say about 1812?

A. I don't know how on earth you could say it but you did say it. That is the reason I went back. (Read the question.)

A. My belief is, from what I have seen from 1857 to the present date, that the body of land was much larger than it is at this date.

Q. After you get through with the body of land, tell us about the islands, that is what I want to know. Is it not true from your observations and experience, since 1857, that these islands that we have gone over repeatedly in examining you, were more distinct, more clearly defined in 1812 than they were in 1857 and than they are now?

634 A. I believe they must have been from the way the ground has been gradually decreasing.

By Mr. DYMOND:

Q. Do you understand what the counsel means by the words clear and distinct and clearly defined in 1812?

A. Well, he meant by the word- clearly defined that they were marked so you are bound to distinguish the lines there.

Q. Did you or did you not intend to say, that it was your opinion that there were islands in this territory in 1812?

A. Well, there might have been some islands there.

Q. When you testified in your re-direct examination as to the interior as it would exist in 1812, was that on positive information and knowledge or was it simply on your opinion?

A. It was based on my observations from 1857 to the present date.

Q. Was it based on the theory that if the same causes had been operating from 1812 to 1857, the same results would have been accomplished?

A. That is the only way I could base it.

Q. Repeat it, what is your opinion as to the condition of this country in 1812 as based upon what you yourself have seen as the causes and results extending from 1857 to 1901?

A. My opinion is, that there was a great deal more land, that most of that marsh was pretty near solid land. That if the same destructive elements have been at work from 1812 up — 1857 why the whole face of that country would be changed.

By Mr. McCLURG:

Q. And that has been at work since the cessation of the flood, according to your best judgment?

A. No sir. Sometimes land is made. I have got a tract of land down the Mississippi river here that has made me eight acres front on the river.

At this stage of the proceedings, the commissioner adjourned the hearing until the 20th day of April 1904, to be resumed at the same place, at 10.30 a. m.

Resumption of Proceedings.

APRIL 20TH—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed.

Present : Hon. Walter Guion, att'y general for Louisiana.

Mess. John Dymond Jr., F. C. Zacharie and Albert Estopinal Jr., associate counsel for Louisiana.

Hon. Monroe McClurg, associate counsel for Mississippi.

WILLIAM BEER, recalled on behalf of the State of Louisiana, testified as follows :

635 Direct examination.

By Mr. DYMOND :

Q. You are the same gentleman who was on the stand the other day and testified in regard to maps that were part of the collection in the Howard Memorial library ?

A. Yes sir.

Mr. DYMOND : In connection with the testimony of the witness, counsel for the State of Louisiana, offer in evidence the certificate of Herbert Putnam, Librarian of Congress, concerning certain maps about which the testimony of Mr. Beer will be taken, and submits to the counsel for the State of Mississippi, the said certificate for inspection, a copy of the same to be furnished him by counsel for the State of Louisiana. And counsel for the State of Louisiana now offer the said document in evidence to be known as Document No. 12.

Mr. McCLURG : Counsel for Mississippi reserve an exception, because of the incompetency of the certificate as evidence.

Q. I understand that you are the librarian of the Howard Memorial library ?

A. Yes sir.

Q. Did you receive from Mr. Herbert Putnam, Librarian of Congress, the maps from the Library of Congress at Washington, D. C. mentioned in the said Document No. 12 ?

A. I did.

Q. Have you examined carefully the maps which were sent to you by the Librarian of Congress, Washington, D. C. ?

A. I have devoted much time to their examination.

Q. Will you please look at the map of B. Lafon of 1806, and state whether or not you have compared it with the photographic print marked map No. 19 ?

A. I have carefully compared it.

Q. Will you please state whether, as a photograph, it is a true and faithful reproduction of the original map of B. Lafon of 1806 ?

Mr. McCLURG : Counsel for Mississippi reserve an exception be-

cause of the incompetency of this question; the maps speak for themselves.

A. There is a difference between the original and the photographic print, the photographic print has on it red lines not on the original.

It is understood between counsel for the State of Louisiana and the State of Mississippi, that the red lines referred to by the witness concerning map No. 19 were placed thereon by W. C. Hodgkins a witness in this case on cross examination by the State of Mississippi and at the request of the State of Mississippi and on redirect examination by counsel for the State of Louisiana at the request of the counsel for the State of Louisiana.

636 Q. Is there anything else, besides red lines on this map that you refer to?

A. There is lettering accompanying the red lines.

Q. What is the lettering on that map?

A. There is lettering accompanying a line running eastward marked A-C-B and accompanying a dotted line running southward marked C & D.

It is further understood between counsel that this lettering was placed thereon by the witness W. C. Hodgkins under the circumstances above detailed.

Q. With the exception just stated, how does the photograph No. 19 compare with the original map concerning which you have testified and which is now before you?

A. After examination I find it is to be a correct photographic copy.

Mr. DUNN: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the photographic print marked map No. 19 and tenders to counsel for the State of Mississippi a copy of said map.

Q. Do you know who B. Lafon was?

A. B. Lafon was a resident of New Orleans, an engineer and surveyor who occupied various official positions. He published other books relative to Louisiana, amongst others a *Annuaire de la Louisiane*.

Q. Will you now please look at this original map by William Darby of 1816 and state whether or not you recognize it to be one of the maps from the Congressional Library at Washington, D. C.?

A. This is one of the maps I received from the Congressional Library.

Q. Have you carefully examined that map?

A. I have carefully examined that map.

Q. Will you please look at these photo prints which are to be marked Nos. 20 and 20-a, and state whether you have carefully com-

pared them with the original map which is now before you, named the Darby map of 1816?

A. I have examined them carefully in comparison with the original.

Q. Can you state from your examination, whether they are, or *or* not true and faithful reproductions of map No. 20 of the whole of the original map, and No. 20-a of the area in dispute in this case?

Mr. McCLURG: Counsel for the State of Mississippi reserve the same exception as to the introduction of map No. 19.

A. After careful examination I pronounce them to be true and faithful copies of the originals.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the photo prints of the William Darby map of 1816 marked maps Nos. 20 and 20-a, and tenders to the counsel for the State of Mississippi for inspection the original
637 of said Darby map and tenders to counsel for the State of Mississippi also the copies of maps Nos. 20 and 20-a.

Mr. DYMOND: Counsel for the State of Louisiana announce, in connection with these maps from the Library of Congress, Washington, D. C., that it is the intention of the State of Louisiana, on the hearing of this case before the Supreme Court of the United States at Washington, to produce the original maps which are now exhibited to counsel for Mississippi in connection with the photographic prints which are offered in evidence.

Q. Examine maps Nos. 20 and 20-a and state whether your testimony as to their being true and faithful copies, was intended to and did cover the matter of coloring?

A. It covers the matter of original printing apart from the coloring.

Q. Does it or does it not include the coloring?

A. It does not.

Q. Do you know who Mr. William Darby was and what evidence he had so far as preparing the topography of this original map of which photographic re-prints Nos. 20 and 20-a are offered in evidence?

A. William Darby was one of the most celebrated American geographers. He was an engineer officer under General Jackson in Louisiana.

Q. About what time?

A. About 1812, from 1812 to 1816.

Mr. McCLURG: Mississippi reserves an exception to this on the ground that it is a matter of history to be proved in that manner and not by the information of the witness.

Q. In testifying as to who the parties are who have made the vari-

ous maps concerning which you are testifying from, how have you qualified yourself to testify in regard to these people?

A. By a special study of the subject and by having in my possession all the works of the said William Darby.

Q. Mr. Beer, will you please look at the map now before you, being the map of the State of Louisiana with part of the State of Mississippi and Alabama territory, by Maxfield Ludlow, and state whether you recognize it to be one of the collection of maps sent to you from the Library of Congress, Washington, D. C.

A. This is one of the maps sent to me from the Library of Congress.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer, said original map to be known as map No. 21, to the counsel for the State of Mississippi for inspection, and in connection with the said offer will present the said map on the trial of this case before the Supreme Court of the United States in Washington, D. C.

638 Mr. DYMOND: Counsel for the State of Louisiana state in connection with map No. 21, that an effort has been made to photograph the same but that owing to its yellow color the negative photographs perfectly black and therefore it is impossible to furnish a photographic copy of said map. With which statement counsel for the State of Mississippi is satisfied.

Q. Do you know who Mr. Maxfield Ludlow was?

A. Nothing except from the legend on the map which states that he was chief clerk, surveyor general's office south of Tennessee.

Q. Do you know to what surveyor general reference is made?

A. To the surveyor general of the United States.

Q. Will you please look at the map which is now before you and state whether you recognize it to be one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. I do.

Q. Whose map is that?

A. This is a map of John Melish.

Q. Of what date is that map?

A. 1820.

Q. Who was John Melish?

A. He was a geographer and map maker.

Q. Of what country?

A. Of the United States.

Q. Will you please look at this photographic print and state whether you have compared it with the map of John Melish concerning which you have just been testifying?

A. I have carefully compared it and find it to be a correct photographic copy, so far as regards outlines.

Q. Have you compared the coloring upon the photographic reprint with the coloring upon the original map?

A. I have compared the coloring.

Q. What does the comparison of the two show?

A. It represents it as nearly as recent coloring can represent ancient coloring.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the photographic re-print of said map of John Melish of 1820, the photographic re-print to be marked map No. 22, and tenders to counsel for the State of Mississippi one of the said photographic prints.

Q. Will you please look at this map which is now before you, being H. S. Tanner's map of Louisiana and Mississippi, and state whether you recognize that map to be one of the collection of maps sent to you by the Library of Congress Washington, D. C.?

A. It is one of that collection.

Q. Of what year is that map credited as being published?

A. 1820.

639 Mr. DYMOND: Counsel for the State of Louisiana now offer to the State of Mississippi, for inspection, the said original map which is to be known as map No. 23, and state in connection with this map that owing to its color, it has been impossible to photograph it because of the fact that it photographs perfectly black owing to its being yellow and that counsel is therefore unable to furnish counsel for the State of Mississippi with a photographic print of said map, but will offer the original map on the trial of this case before the Supreme Court of the United States in Washington, D. C.

Mr. McCLURG: Counsel for Mississippi accept that statement as satisfactory.

Q. Will you look at this map which is now before you and state whether you recognize it to be one of the collection of maps sent to you from the Library of Congress Washington, D. C.?

A. It is one of the collection.

Q. What map is that?

A. It is a map of S. Augustus Mitchell, 1834.

Q. Who was S. Augustus Mitchell?

A. He was a publisher of maps of all the different States of the United States.

Q. Was he a map publisher at the time of the issuing of these maps?

A. Yes sir.

Q. What is the date of that map?

A. 1834.

Q. Will you please look at those photo prints and state whether you have examined and compared them with the Mitchell map concerning which you have just been testifying?

A. I have examined and compared them and find them correct so far as regards the original print in black ink.

Q. Have you examined the coloring in the photographic reproductions of this Mitchell map?

A. I have examined the coloring and find that the outlines of the colors correctly represent the original map.

Q. What difference, if any, exists in the coloring?

A. A difference of time and care.

Q. Does any difference exist in the color of the pigments used?

A. This is technical you know. The chemical character of the photographic printing paper has altered the coloring slightly, until what is bright yellow in the original has become a dull yellow in the copy.

Q. Does the outline showing the divisions of governmental control compare correctly on the photo prints with the original map which you have now before you?

A. They do compare correctly.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer in evidence the photo prints of the said map of S. August Mitchell of 1834, to be known as map No. 24, and tenders to the counsel for the State of Mississippi the said original map of S. Augustus Mitchell for inspection, with a photo print of said map.

By Mr. McCLURG:

Q. You notice that discrepancy there don't you (to witness)?

A. Yes sir.

Mr. McCLURG: Counsel for the State of Mississippi calls attention to a discrepancy in the map handed him in the painting of the islands and asks for a different map which is given him. And he, counsel for the State of Mississippi calls attention of the witness to the discrepancy so he can make what explanation he sees proper.

By Mr. DYMOND:

Q. Will you please examine the locality on map No. 24 to which your attention has been called, as to their being a failure to color Cat island, Grand island and Ship island, and state whether on the photo print marked 24, the islands are colored as in the original map?

A. In the copy before me the islands are colored as in the original.

Q. Will you please now look at the photo print which has been tendered to the counsel for the State of Mississippi and state whether those islands on the map tendered to counsel for Mississippi are colored similar to the coloring on the original map?

A. In the copy now before me which is the one tendered counsel for Mississippi, Malheureux islands are not colored at all, in the original they are colored red.

By Mr. -CLURG:

Q. Indicating what?

A. Indicating the same color as that of St. Tammany parish.

By Mr. DYMOND:

Q. On the copy tendered to the State of Mississippi are they colored at all or is there an absence of coloring?

A. There is an absence of coloring.

Q. In the copy filed in evidence are those islands colored at all or is there an absence of coloring?

A. There is also an absence of coloring.

Q. What does the original map show as to coloring in regard to the Malheureux islands?

A. A red tint similar to that of the adjoining main land.

Q. Of what State?

A. Of the State of Louisiana, parish of St. Tammany. I think I stated in my evidence that they differed in point of care.

Q. Will you please look at the map which is now before you, and state whether you recognize it to be one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. I do.

641 It is understood and agreed between counsel for the States of Louisiana and Mississippi that the original collection of maps from the Library of Congress, Washington, D. C., now in the possession of Mr. William Beer librarian of the Howard Memorial library, shall be kept in the possession of Mr. William Beer, to be used by the State of Mississippi.

Q. Whose map is it that you now have before you?

A. It is the map published by Graham and Tanner, known as the map of Tanner.

Q. Concerning what territory does it cover?

A. It is a map of the State of Louisiana and of central and southern portions of the State of Mississippi.

Q. Who was C. Graham?

A. C. Graham was a printer and publisher, of New Orleans.

Q. Was Tanner the same Tanner that published map No. 23?

A. He was the same Tanner.

Q. Will you please look at these photographic reproductions which for the purpose of identification are to be known as map No. 25 and state whether you have compared them with the original Tanner-Graham map now before you?

A. I have compared them carefully.

Q. What did you find as a result of your comparison?

A. They are a correct photographic reproduction of the original printing in black.

Q. How do they compare as to colors shown on the original and the coloring shown on the photographic reprints?

A. Generally the reproduction of color is correct. As far as regards Marianne islands, in the copy they have been colored with one stroke of the brush thereby making them appear as one island, the attempt however is to represent the same yellow color.

Mr. McCLURG: The same objection is urged by the State of Mississippi to this plan of examination for the reason that the maps should speak for themselves.

Q. How does the coloring as showing the different governmental sub-divisions, compare, on the originals with the photographic reprints?

A. It is as nearly as possible a correct reproduction.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of the witness, now offer, produce and file in evidence, the said map No. 25, in four sections, and tenders the original of said map to counsel for the State of Mississippi for inspection, and tenders to counsel for the State of Mississippi a photographic reprint of said map in the four sections.

642 Q. Will you please examine the balance of the sections of map No. 25 and state what difference exists between those sections and the original?

A. There is no hand coloring on the other sections.

Q. Are they, as photographic reproductions, correct reproductions of the other sections of map No. 25?

A. They are correct reproductions.

Mr. McCLURG: Counsel for the State of Mississippi urges the same exception as above noted.

Q. Will you please look at the map which is now before you and state whether you recognize it to be one of the collection of maps sent to you from the Library of Congress, Washington, D. C.?

A. I do recognize it to be one of the maps sent to me from the Library of Congress.

Q. Whose maps is it you have before you?

A. The map of H. S. Tanner of Philadelphia, of 1837.

Q. Is that the same Tanner that you testified about in your previous testimony?

A. Yes sir.

Q. What territory does this map cover?

A. It is the a map of the State of Louisiana together with the central and southern portions of the State of Mississippi.

Q. Will you please compare these photographic prints which for the purpose of identification, are to be numbered map No. 26, sections 1, 2, 3 and 4, and state whether you have compared them with the original map?

A. I have so compared them.

Q. What does that comparison show?

Mr. McCLURG: Same exception as above noted.

A. They are correct photographic copies so far as regards the original printer matter.

Q. Have you compared the coloring on the photo prints with the coloring on the original map?

A. I have compared the coloring.

Q. How does this coloring compare on the photo prints with that on the original map?

A. The coloring on the maps is very carelessly done and differs in the three copies.

Q. Does the coloring show the governmental sub-division, correctly or incorrectly?

A. Generally, in the coloring, correctly; but in one of the copies Marianne islands are colored with one stroke of the brush making them look as one island; in another copy the color is rubbed out on Marianne islands.

Q. Where Marianne islands are colored, how does the coloring compare as to color, with the original map?

A. It is yellow as in the original map.

Q. According to coloring, to what State are the Marianne islands a part?

A. Of Mississippi, both on the original and photographic prints.

Mr. McCLURG: Counsel reserves exception for the reason above stated, that they show for themselves.

643 A. There is one other difference in coloring, there is red here on one of the photographic copies, the boundary between Louisiana and Mississippi is colored red. In the two others it is colored a deeper shade of yellow.

Q. Are there any other differences noted by you between the photo prints and the original, so far as coloring is concerned?

A. In coloring, the coloring of the coast in the copies has been done less carefully than in the original.

Q. Do these differences which you have noted affect in any way the Governmental divisions of territory shown by the original and by the photo prints?

A. No sir. I would state that the island of Saint Joseph colored bright yellow in the original, seems to have been colored and washed out in the photographic copies.

Q. Has it been washed out in all of the photographic copies?

A. Of the island of Saint Joseph, yes sir. I know of no other differences.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the photo prints of the said original map, the said photo prints to be marked map No. 26, sections 1, 2, 3 and 4, and offers the said original map to counsel for the State of Mississippi for inspection, and tenders to counsel for the State of Mississippi photo prints of the said four sections of map No. 26.

Q. Will you please look at the original map before you, for the purposes of identification to be known as map No. 27, and state whether it is one of the collection of maps received by you from the Library of Congress, Washington, D. C.?

A. It is one of those maps.

Q. Whose map is it?

A. It is the map of John La Tourrette.

Q. Of what territory is the map?

A. It is a map of the State of Mississippi with portions of Louisiana and Alabama, showing the communication by land and water between the cities of New Orleans and Mobile.

Q. Who was John La Tourrette?

A. He was a map maker of Mobile, Alabama.

Mr. McCLURG: Counsel for Mississippi reserves an exception to this method of proving the correctness of maps that have been photographed, upon the ground that they are to be judged by the court as to their correctness and not by the parole testimony of one who has examined them. The court in the opinion of the counsel, for Mississippi, will be governed by its own observation as to the correctness of these photographic copies and not by the testimony of the witness on that point.

It is understood that this objection shall apply to all testimony of like character without the necessity of repeating it.

644 Q. Will you please compare the photo prints of this map to be known as No. 27, sections 1, 2, 3, 4, 5 and 6, with the original map which you have before you?

A. I have made a comparison and find that, as far as the original printing is concerned, the photo maps are correct.

Q. How do the photographs compare with the original so far as coloring is concerned, and state in detail any differences of coloring, more particularly on section 1?

A. The coloring on the photographic copies is less carefully executed than in the case of the original. The islands unnamed off Cape Malheureux, are colored yellow in the original.

Q. That indicates that they belong to what government as indicated on the original map?

A. In the original they are of the same coloring as Saint Bernard parish.

Q. How are they colored on the photo prints?

A. They are left uncolored.

Q. How do the photo prints otherwise compare with the original as to coloring?

A. The coloring, in the main, represents the coloring on the original.

Q. How do the colors of the photo prints compare as to the colors of the original, so far as governmental divisions by differences in color?

A. They show the same distinctions of governmental divisions.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer, produce and file in evidence, the photo prints of the original map No. 27, sections, 1, 2, 3, 4, 5 and 6, and tenders to counsel for the State of Mississippi the original map No. 27 for inspection, and tenders to counsel for the State of Mississippi copies of the photo prints of the six sections of map No. 27.

Q. Will you please look at this map, which, for purposes of identification, will be called map No. 28, and state if it is a part of the collection of maps received by you from the Library of Congress, Washington, D. C.?

A. It is one of the maps.

Q. Whose map is it?

A. It is a map of G. W. R. Bailey.

Q. Of what year?

A. 1853.

Q. Who was G. W. R. Bailey?

A. He was a civil engineer.

Q. What territory does this map cover?

A. It is a map of Louisiana.

Q. Will you please look at these photo prints, which, for purposes of identification are to be marked map No. 28, sections 1, & 2, and state whether you have compared them with the original map No. 28?

A. I have compared them.

Q. How do they compare as photo prints of the original map?

A. As photo copies of the original printed matter I find them correct.

645 Q. Have you compared the coloring of the photographic reprints with the coloring of the original map?

A. Yes sir.

Q. How do they compare as to coloring, the photo reprints with the original?

A. The coloring of the original is careless. The coloring of the copies is equally so, but differs slightly in the portions left uncolored.

Q. Does the coloring of the photo prints correctly or not represent the coloring of the original so far as governmental divisions of the territory are concerned?

A. Generally speaking, yes.

Q. In what particular does it not correctly represent the differences of governmental sub-divisions?

A. In slight and unintentional defects of the color lines.

Q. Will you please state whether that does, or does not, affect the correctness of the reproduction of the map so far as showing the differences in governmental sub-divisions?

A. It does not affect that representation.

Mr. DYMOND: In connection with the testimony of the witness

counsel for the State of Louisiana now offer, produce and file in evidence, the photo prints testified to, to be marked map No. 28, sections 1 and 2, and tenders to the counsel for the State of Mississippi for inspection the said original map and tenders to counsel for the State of Mississippi photo prints of the two sections of said map.

Q. Will you please look at this original map now before you, which for purposes of identification, shall be named map No. 29, and state whether you recognize it to be one of the collection of maps sent to you by the Library of Congress Washington D. C.?

A. It is one of the maps.

Q. By whom was said map made?

A. It was published by Schonberg and Company.

Q. In what year?

A. In the year 1866.

Q. Who was Schonberg and Company?

A. They were map publishers.

Q. What territory does this map represent?

A. It is a map of Louisiana.

Q. Will you please look at these photo prints of map No. 28 and state whether you have compared them with the original?

A. Yes sir, I have compared them.

Q. How do they compare with the original so far as being reproductions of the original?

A. They are correct photographic reproductions of the original.

Q. Have you compared the coloring of the photo prints with the coloring of the original?

A. Yes sir.

Q. How does the coloring of the photo prints compare with the coloring of the original?

A. The coloring of both the original and the copies is carelessly done; the differences are slight.

Q. Do those differences or, do they not, affect, in any way, the governmental divisions as shown by the map?

A. They do not.

646 Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the photo print of the said map to be marked map No. 29, and tenders to counsel for Mississippi, the said original map for inspection and a photo print of said map.

Q. Will you please examine this map which is now before you, for purposes of identification to be called map No. 30, and state whether it is one of the original collection of maps received by you from the Library of Congress, Washington, D. C.?

A. It is one of the maps received by me.

Q. Who made that map?

A. It was made by T. S. Hardee.

Q. Who is T. S. Hardee?

A. T. S. Hardee was an engineer of New Orleans.

Q. Of what territory is the map?

A. It is a map of Louisiana, embracing portions of Arkansas, Alabama, Mississippi and Texas.

Q. Will you please examine these photo prints of map No. 30 and state whether you have compared them with the original?

A. I have compared them with the original.

Q. How do they compare with the original as to being photographic reproductions?

A. They are correct photographic reproductions so far as regards the original printed matter.

Q. Have you compared them with the original, so far as the coloring is concerned?

A. I have compared them with the original.

Q. How do they compare with the original as to coloring?

A. Two of the copies are incompletely colored. All of them are reasonably correct as to coloring.

Q. Do they, — do they not, compare with the original as to differences in colors showing the governmental sub-divisions?

A. They do.

Q. How does the coloring of the photo prints compare as to the coloring of the original in showing the differences in the governmental divisions?

A. The completely colored copy shows as in the original the differences of territorial possessions; two of the copies are uncolored, but in that uncoloring show a difference of territorial possession.

Q. In what portion of section 1 of this map does this difference of coloring exist?

A. In the eastern portion of the parish of Saint Tammany.

Q. How is it shown on the original?

A. It is colored green in the original.

Q. How is it shown on one of the three photo prints?

A. It is also colored green.

Q. How is it shown on the other two photo prints?

A. It is left almost uncolored.

Q. Is there anything to evidence the territorial line of sub-division?

A. The absence of color is to the west of the line. The Mississippi line is clearly shown.

Q. Does, or does not the absence of color on the two photo prints materially affect the evidence of political sub-division?

647 A. In no way; it is only an absence of likeness to the original.

Mr. Dymond: Counsel for the State of Louisiana in connection with the testimony of the witness, now offer, produce and file in evidence, the said map No. 30 in its six sections, and tenders to counsel for the State of Mississippi the said original map for inspection with copies of said six sections.

Q. Will you please look at this map which, for purposes of identification, is to be known as map No. 31, and state whether it is one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. The map before me is one of the maps sent by the Librarian of Congress to me.

Q. Whose map is it?

A. It is the map of Frank A. Gray.

Q. Who was Frank A. Gray?

A. I know nothing of him.

Q. Of what territory is it a map?

A. It is a map of Louisiana.

Q. Will you please look at these photo prints and state whether you have compared them with the original map?

A. I have compared them.

Q. How do they compare as photo prints of the original map?

A. So far as regards the reproduction of the black printed matter, the original black printed matter, they are correct photo reproductions.

Q. Have you examined the coloring of the photo prints with the original?

A. Yes sir.

Q. How does the coloring of the photo prints compare with the coloring of the original?

A. It differs in a very curious manner. In the original the portion between East Pearl river and West Pearl river, is colored very lightly. In the copies this portion is left uncolored.

Q. Do the photo reproductions show the differences in governmental sub-divisions?

A. Yes sir.

Q. How do those showings of differences compare with the showing of differences on the original map?

A. They are similar in the copy to the original.

Q. Do they, or not, correctly show the governmental subdivisions by differences in color?

A. They reproduce the differences shown in the original.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said map No. 31 and tenders to counsel for the State of Mississippi for inspection the said original map with a photo print thereof.

648 Q. Will you please look at the map which, for purposes of identification, will be called map No. 32, and state whether it is one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. It is one of the maps so received.

Q. Whose map is it?

A. It is a map of Mississippi by E. G. Wall.

Q. Of what date?

A. Of 1882.

Q. Who was E. G. Wall?

A. He was commissioner of the State of Mississippi.

Q. Commissioner of what?

A. Of the State board of emigration and agriculture.

Q. Will you please look at these photographs and state whether you have compared them with the original map concerning which you have just been testifying?

A. I have compared them and find them correct photo copies of the parts originally printed black.

Q. Have you compared the coloring of the reproductions with the coloring of the original map?

A. I have compared the coloring.

Q. How do they compare as to coloring?

A. The coloring, both of the original and the reproduction is done carelessly. The differences are slight and immaterial.

Q. Do the differences, if any, affect the manner of the showing of governmental divisions?

A. The coloring affecting the governmental divisions is the same in both original and the copies.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the said map No. 32 and tenders the original map No. 32 to counsel for the State of Mississippi for inspection, with a photographic reprint of same.

Q. Will you please look at this map, which, for identification is to be called No. 33, and state whether it is one of the collection of maps received by you from the Library of Congress, Washington, D. C.?

A. It is one of the maps.

Q. By whom was this map made?

A. By Russel Hinman.

Q. Of what date?

A. Of 1885.

Q. Who was Russel Hinman?

A. He was a maker of school geography-s.

Q. Of what territory is that a map?

A. Of Louisiana.

Q. Will you please look at these photographs and state whether you have compared them with the original map?

A. I have compared them.

Q. What did you find as a result of your comparison so far as their being photographs of the original map?

A. They are correct photographic copies of the original map.

Q. Have you compared the coloring of the original with the coloring of the photographic copies?

A. I have compared the coloring.

649 Q. What did you find as a result of the comparison of the coloring?

A. The coloring of two of the copies reproduce almost precisely the coloring of the original; the third represents it in the main but is less carefully done.

Q. Do the colors show the governmental sub-divisions?

A. They do.

Q. How do the photographs compare with the original in showing the differences of governmental divisions?

A. They represent them correctly.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the said map No. 33, and tenders the original map No. 33 to the counsel for the State of Mississippi for inspection with a photograph thereof.

At this stage of the proceedings the hearing was adjourned by the commissioner for recess, to be resumed again at 2.30 p. m.

Resumption of Proceedings.

Pursuant to adjournment for recess the hearing was resumed at the same place and date, at the hour of 2.30 p. m. all parties being present.

Examination of WILLIAM BEER resumed.

By Mr. DYMOND:

Q. Will you kindly look at the map now before you, which, for purposes of identification we will call map No. 34, and state what that map is.

A. It is a general map of the seat of war in Louisiana and West Florida.

Q. Of what war?

A. Of the war of 1812. But this particular map illustrates the attack of the British on New Orleans in 1814 and 1815.

Q. Where did this map come from?

A. It is out of a book known as the War in West Florida by Lacarrier Latour.

Q. Who was Lacarrier Latour?

A. He was an engineer officer who served as engineer for General Jackson at the battle of New Orleans.

Q. Who is it made by?

A. It is the map of Lacarrier Latour taken from the B. Lafon map.

Q. Is that the same Lafon concerning whom you testified previously in this case?

A. Yes sir.

Q. Did B. Lafon have anything to do with the battle of New Orleans?

A. He was also in the battle.

Q. In what capacity, if you know?

A. I do not know.

Q. Will you please look at these photographs of the map now before you which are for identification to be marked maps Nos. 34 and 34-a, and state whether you have compared them with the original map?

A. I have compared them.

650 Q. What did you find as a result of your comparison, so far as their being photographs of the original maps?

A. They are correct photographic reproductions of the original map.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer, produce and file in evidence, the said maps marked Nos 34 and 34-a, and tenders the said original map to counsel for the State of Mississippi for inspection, together with the said photographic copies marked 34 and 34-a.

Q. Will you please look at the map which is now for the purpose of identification to be marked No. 35, and state what map it is?

A. It is a map of the State of Louisiana.

Q. Issued by whom?

A. Issued by the Department of the Interior through the Land Office and compiled by C. Roeser.

Q. Of what territory is that — map?

A. Of the State of Louisiana.

Q. And of what year?

A. 1879.

Q. Of what government or bureau was the department that issued this map?

A. Of the Government of the United States.

Q. Will you please look at the two photo prints and state whether or not you have compared them with the original map?

A. I have compared them and find them to be correct photographic prints.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence the said original map to be marked map No. 35 and tenders to counsel for the State of Mississippi the photographic prints of the whole of said map and of the area in dispute.

Q. Will you please look at this map which is now presented to you and for the purposes of identification is to be marked map No. 36, and state what map it is?

A. It is a map of the State of Louisiana issued by the Department of the Interior through the General Land Office and under the supervision of G. U. Mayo.

Q. Is that map issued by the same department of Government as the one concerning which you have just testified, marked map No. 35?

A. Yes sir, issued by the same department that issued map No. 35.

Q. And bears what date as to the date of issuance?

A. Bears the date of 1886.

Q. Will you please look at these photo prints and state whether you have compared them with the original map?

A. Yes sir, I have examined and compared them.

Q. How do they compare as photographic reproductions of the original map?

A. I find them to be correct photographic reproductions of the original map.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said original map marked map 36 and tenders
651 to counsel for the State of Mississippi photographic reproductions of the whole of said map and of the disputed area.

Q. Will you please look at this map which is now before you and for purposes of identification is to be marked map 37, and state of what State it is a map and by whom it was issued?

A. It is a map of the State of Mississippi and issued by the Department of the Interior of the United States through the General Land Office.

Q. In what year?

A. In the year 1890.

Q. Will you please look at these photo prints of this map and state whether you have compared them with the original map?

A. I have examined and compared them and find them to be faithful photographic reprints.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the said original map to be marked map No. 37, and tenders to counsel for the State of Mississippi photographic reprints of the whole of said map and of the disputed area.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence in this case, and tender to counsel for the State of Mississippi copies of the following maps, to-wit:

The Century atlas map of Louisiana, copyrighted 1897 and 1902 by the Century Company, to be marked map No. 38.

Map of the State of Louisiana issued by the Department of the Interior, General Land Office, Hon. S. W. Lamoreux Commissioner, compiled from the official records of the General Land Office and other sources under the direction of Harry King C. E. chief of drafting division, G. L. O. 1896, to be marked map No. 39.

Matthews and Northrup up to date map of Louisiana, copyrighted

1901 by the Matthews-Northrup Company, to be marked map No. 40.

Map of Louisiana by the Kenyon Printing and Manufacturing Company, copyrighted February 24 1903 to be known as map No. 41.

The Rand-McNally new county township and railroad map of Mississippi with complete index of all post offices and railroads with 1900 census. Copyrighted 1903 by the Rand-McNally Guide Company, to be marked No. 42.

The Rand-McNally new county, township and railroad map of Louisiana, with complete index of all post offices and railroads with 1900 census. Copyrighted by Rand-McNally and Company. To be known as map No. 43.

Rand-McNally Company sectional map of Mississippi compiled from the records of the offices of the surveyor general and of
652 the board of emigration and agriculture, Jackson, Mississippi. Copyrighted by the Rand-McNally Company in 1896, to be known as map No. 44.

Tunison's new railway, post office and distance map of Arkansas, Mississippi and Louisiana, from latest surveys by H. C. Tunison, publisher, Jacksonville, Illinois. Copyrighted 1901 by H. C. Tunison. To be known and marked as map No. 45.

Hardee's geographical and historical and statistical map of Mississippi, embracing portions of Louisiana, Tennessee, Arkansas and Alabama, from recent surveys and investigations, officially compiled under authority from the State of Mississippi by T. S. Hardee State engineer A. D. 1871, approved under an act of the legislature of Mississippi approved May 10th 1871, J. L. Alcorn governor of Mississippi. To be known and marked map No. 46.

Mr. McCLURG: Counsel for the State of Mississippi agrees if he can get a map like this he will relieve the counsel of the State of Louisiana from the necessity of furnishing a copy of said map. Map of the United States Territories and insular possessions issued by the Department of the Interior, United States General Land Office, Hon. Binger Hermann Commissioner, showing the extent of public surveys, Indian, military and forest reservations, railroads canals and other details, compiled from official surveys of the General Land Office and other authentic sources. Harry King C. E. chief, drafting division, 1889. To be known and marked as map No. 47.

At this stage of the proceedings, the hearing was adjourned by the commissioner until tomorrow, to be resumed at the same place and at the hour of 2 p. m.

Resumption of Proceedings.

NEW ORLEANS, April 21st, 1904—2 p. m.

Pursuant to adjournment the hearing was this day resumed at the same place, at the hour of 2 p. m.

Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, att'y general State of Louisiana, Mess.

John Dymond, Jr., F. C. Zacharie, and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

653 Examination of Mr. WILLIAM BEER resumed.

Cross-examination.

By Mr. McCLURG:

Q. Mr. Beer, it was my misfortune not to hear your original examination in this case and if I should ask you a question that you have already answered you will please accept this as an apology for so doing. I take it for granted that you have read the two acts of Congress creating the State of Louisiana and of admitting her into the Union?

A. Yes sir.

Q. And also the act of Congress admitting the State of Mississippi into the Union?

A. Yes sir; but I have not read them for this purpose. I am not as familiar with them as on the date I read them, I have not read them recently.

Q. You found in neither of those acts, I take it, any reference to a deep water channel?

A. Should I not have the acts of Congress before me. I don't remember—I am prepared to say that I don't remember any such reference.

Q. The act admitting the State of Mississippi, in describing her southern boundary from Alabama westward reads "thence westwardly including all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne." I want to ask you to do us the kindness to examine the map of B. Lafon 1806, and tell us what islands you find on that map within six leagues of the Mississippi shore. Let us begin at the mouth of Pearl river and travel eastward.

A. We have to begin by discussing, or, by stating that this map is not necessarily correct. You are asking me now about a special distance which I can measure correctly. Now, it may so happen that that was not truly at that distance. This Lafon map, is Lafon's presentation of the coast at that time. All I can say is that on

Lafon's map, as measured by the scale given on it, there are certain islands within six leagues, that is all I can say.

Q. That is all I want you to say. Just tell us what that map shows?

A. Going eastward from the point where Pearl river enters the gulf of Mexico, the line of six leagues takes in on Lafon's map, Isle au Pied, Malheureux, Isle Saint Joseph and—how far do you want me to go?

Q. Out to the Alabama line?

A. Isle Saint Marie. Now, you take the political and physical—

Q. Just what the map shows?

A. I do not see any political and physical distinctions on the map.

Q. Just what the map shows, that is all I want.

A. Isle au Chat, Isle au Chevreux, Isle au Vaseux, an island unnamed, Isle au Chien, Isle à Corne. That is the end.

Q. Does it not also take in a little group of islands—

A. South of Isle au Chat it takes in three small islands unnamed.

Q. Do you see on this map any indications of a deep water channel such as that claimed by Louisiana to be the dividing line between the two States?

654 A. I see no indication of channel. I would put it in this way, I see no channel marked; I see soundings that give depths—

Q. Just answer as I ask you then we will get through quicker. Do you see any distinctive markings of the Mississippi sound?

A. Any limitations of Mississippi sound?

Q. Distinctive marks, names?

A. I see no name of Mississippi sound.

Q. Now Mr. Beer, I will ask you to begin with this map of 1806 and go, at least to 1860 which is half a century, through these maps that were introduced on yesterday and which you said you had examined and tell me whether upon a single one of them there is any marking of the deep water channel now claimed by Louisiana to be the dividing line between the two States, or any such thing as a Mississippi sound designated as separate from the gulf of Mexico?

Mr. DYMOND: Counsel for the State of Louisiana notes an exception to this question and for cause of exception says that the maps are the best evidence of whether they do or do not show any channel line and that in connection with the maps about which the witness was examined yesterday, April 20th, he was examined solely for the purpose of identifying the maps with photo prints and not as an expert in connection with the maps concerning which he was testifying, and that if counsel for Mississippi desires to examine him on these points that he should make the witness a witness for the State of Mississippi, at the proper time.

A. From memory I am certain there is a marking of it on one of them.

Q. Now, listen to my question. I am talking about the maps and

exclusively about the maps, exclusively what the maps show, there is no memory about it, I just want what the maps show.

A. Then I require each one of them to be shown to me in succession.

Q. Well, I will show them to you if it takes me a week. Here they are. Now, you have looked at the map of 1806?

A. Yes sir.

Q. You find any markings of the deep water channel of Mississippi sound on that map?

A. No sir.

Q. Please look, at the map of William Darby shown to you yesterday and answer the same question?

A. When you ask me whether there is a deep water channel, you mean the words "deep water channel" attached to a line?

Q. You ought to be able to understand my question. It is put as plain as I can make the English language state it, and I will ask the stenographer to read my original question about the deep water channel that Louisiana now claims to be the dividing line between the two States, whether it is indicated on these maps or not?

A. It is indicated on this map by soundings, I am referring to the Darby map.

By Mr. DYMOND:

Q. Give the year so as to define it as we go along?

A. Darby, 1816.

655 By Mr. McCLURG:

Q. State the course of it. If you say that that is the same deep water channel that Louisiana now claims to be the dividing line between the two States, state what the Darby map shows about it?

A. The Darby shows a succession of soundings starting at the extreme east of Lake Borgne.

Q. Name the point?

A. A point where Bayou Bienvenu enters the lake and runs to a point near Isle Saint Joseph; there are then shown soundings of 10, 12 and again 10 fathoms, as far as Buck island; then there are soundings of 15 fathoms as far as the mouth of the Pascagoula river.

Q. Are not these last soundings you have mentioned north of Cat island and Ship island?

A. They are.

Q. And north of Marianne islands?

A. Yes sir. When I stated fathoms I was taking the figures on the map and assuming them to be fathoms; it may be incorrect. I am taking them relatively to other figures there, that 36 cannot be 36 fathoms, therefore I must take it that these are feet.

Q. Do you not find these fathoms marked from Cat island between Chandeleur islands and the coast of Louisiana, also down to Black lake?

A. Fortunately I find one entry which gives the distinction. These are feet, there are five feet and the feet are left out in the other places; I do find six feet; I find figures which mean feet.

Q. Then you find a deep water channel lying between the Mississippi shore, Marianne islands, Cat island and Ship island Dog island and Horn island, do you not?

A. I find soundings marked along that distance. I do not claim it to be a deep water channel.

Mr. DYMOND: It is understood that the same objection of counsel for Louisiana as to the incompetency of this testimony when the maps speak for themselves, shall apply to all similar questions propounded to the witness on cross examination on this subject.

Q. I wish you would tell me to what State Darby's map gives Malheureux islands?

A. It has the same coloring as Hancock county.

Q. And Marianne islands have the coloring—

A. Of Saint Bernard parish.

Q. Do you find Saint Bernard parish on that map?

A. I do not. I find parish of Plaquemine.

Q. And Cat island is given—

A. Cat island is also, given to Plaquemine parish.

Q. And the Chandeleurs?

A. The Chandeleurs also.

Q. Referring to my previous question, I now show you the map of Mr. Maxfield Ludlow of 1815 and will ask you to please state whether there is a deep water channel following the course of the one that Louisiana now claims to be the dividing line between the two States, marked on this map?

A. I am under the impression that the line shown on this map indicate a track taken by the British ships of war, but it is so indistinct that I cannot be clear, the British ships of war anchored at Ship island. But there is no distinctive marked deep water channel on this map.

Q. This map shows a navigation thread like line does it not, from Bay Saint Louis around north of Cat island and Ship island and Horn island on, to the Mobile bay?

A. I think there is a navigation line.

Q. And it also shows a navigation line from Bayou Bienvenu to the south of this—

A. Yes sir.

Q. That passes close to the south side of Cat island?

A. Yes sir.

Q. And Ship island?

A. Yes sir.

Q. Horn island?

A. Yes sir.

Q. Petite Bois island?

A. Yes sir.

Q. And Dauphin island into the bay of Mobile?

A. But it states that it is the track of the British barges which were boats.

Q. We have here a map of John Melish. See if there is any navigation track shown on this map?

A. There is a track shown to the north of Cat island which has no legend, and a track shown to the south of Cat island which is marked "Track of the British barges."

Q. And it goes no further east than east of Cat island?

A. It stops at Cat island.

Q. And then turns north around Cat island?

A. Yes sir.

Q. There is no Mississippi sound on the maps which you have examined as distinct from the waters of the Gulf, is there?

A. None. Is it fair to me—

Q. I want you to answer my questions.

Q. May I say—I would like to say in this case the map maker has called that whole body of water—he has not called it technically Mississippi sound but he has called it Lake Borgne. Is it fair for me to tell Mr. Dymond or you—

Q. He can ask you that on re-direct examination. I show you now the first map that we have had made by Mr. H. S. Tanner.

A. Shall I assume the question? There is no channel whatever.

Q. No mark of Mississippi sound?

A. And no mark indicating that a particular piece of water is called Mississippi sound.

Q. The same question, please sir, as to the map of Mr. S. Augustus Mitchell of 1834.

A. There is no mark of navigation and there is no body of water called Mississippi sound.

Q. Answer the same question, please, with reference to a map made by C. Graham and H. S. Tanner in 1834?

A. There is no marked channel and no body of water separately called Mississippi sound.

Q. I show you now, the map of Mr. H. S. Tanner of 1837 and ask you the same question?

A. There is no channel marked and no body of water called Mississippi sound.

657 Q. Now, I show you the map of John La Tourette of 1839, and ask you the same question?

A. There is an indication with a legend on the La Tourette map of "Steamboat route from New Orleans."

Q. And the map indicates with it, between the cities of New Orleans and Mobile?

A. Yes sir.

Q. Please state from what point to the westward, that channel leads?

A. It starts from the Rigolets.

Q. And ends where, to the eastward?

A. At Mobile itself.

Q. It passes north of Round island near Saint Joseph island, north of Cat island, north of Ship island and north of Horn island?

A. Yes sir.

Q. And there is no indication of any deep water channel to the south of that one, marked on this map?

A. No sir.

Q. And no distinctive mark of the Mississippi sound?

A. No sir.

Q. I show you the map of Mr. G. W. R. Bayley, civil engineer, 1855 and will ask you the same question?

A. There is no channel marked on this map. There is no body of water marked Mississippi sound.

Q. Look at that map and see if Half Moon island, Cat island, Ship island, Horn island, are not given to the State of Louisiana by the map maker?

A. They are colored in the same way as the parish of Saint Bernard.

Q. This is Schonberg's map of Louisiana dated 1866. I see on this map, marked Mississippi sound; is that not the first time that these maps show the Mississippi sound as a separate body of water from the gulf of Mexico?

A. It is the first time that these maps show that.

Q. And these maps show no deep water channel as that proposed by the State of Louisiana to be the dividing line between Mississippi and this State?

A. It is not a map that professes to show deep channels, it is an ordinary map.

Q. Does not this map indicate that Cat island, north end of Chandeleur island, as well as Ship and Horn islands, belong to the State of Mississippi?

A. They are uncolored as is the State of Mississippi.

Q. And the Louisiana islands are colored after the color of Louisiana?

A. Many of them not; these are not colored you see?

Q. Is it not true that the whole of the Chandeleur islands are uncolored, as the State of Mississippi is?

A. It is true.

Q. We look now at the map of T. S. Hardee, 1868, published in 1871, approved by authority of act of the legislature of 1868. H. C. Warmouth, governor.

A. It shows no channel.

Q. But shows a Mississippi sound?

A. It does show the Mississippi sound.

Q. And it shows Saint Joseph island, Marsh and Half Moon islands and Round island, as well as Cat island and Ship island, to belong to the State of Mississippi, does it not?

658 A. I do not think so. The coloring of Saint Bernard and of Mississippi are pretty much the same.

Q. Then, does it not show, as a matter of fact, by the coloring, that the islands that I have named, belong to the State of Louisiana. Are not those islands of the same color as Saint Bernard parish?

A. I cannot tell from the coloring. I can't explain that, owing to the etching to show the margins; in coloring Saint Bernard, the same yellow color that looks gray in Saint Bernard is there, clear, therefore it is impossible to say what that may mean.

Q. It may mean either State then?

A. Yes sir.

Q. Then, so far as we can have gone, these maps show, alternately, that some of these islands belong to one State while other maps show that some islands belong to the other State and we now find one that gives them to either State?

A. They don't show belongings at all; they show conceptions of belongings.

Q. We next come to Mr. Gray's new map of Louisiana?

A. This is out of an atlas in the Library of Congress; the map itself bears no marked date; the date given is the date given by the Library of Congress in their certificate.

Q. I would be glad if you would refer to that affidavit and give us the date of this map?

A. 1878.

Q. Tell us now, whether there is any marking of the deep water channel now claimed by Louisiana to be the dividing line between the two States, on this map?

A. There is no marking.

Q. The next thing I wish you would look at are leaves from Hinman's history, and ask you whether there is any marking on that map which indicates the deep water channel now claimed by Louisiana to be the dividing line between the two States?

A. There is no channel line marked on this map.

Q. Mississippi sound is on the last three maps we have examined, is it not?

A. Yes sir.

Q. Now, look at the map of Mr. E. G. Wall made by the board of emigration and agriculture and tell us if you can see on that map any indication of the marking of the deep water channel—

A. I would not expect to find it.

Q. And anything else you say in regard to that map will not be taken as an affront.

A. I would not expect to find it on any ordinary map.

Q. But on an extraordinary map you would?

A. On a chart I would, on a sailing chart.

Q. You find the Mississippi sound marked there?

A. Yes sir.

Q. And you find also, on this map, about 271,180 acres of land for sale in Hancock county?

A. Yes, sir, I see that.

Q. So then, is it not true that from the Exhibit No. 19, the Lafon

map of 1806, up, through all of these maps that have been introduced, there is nothing to indicate the deep water channel that is now claimed by Louisiana to be the dividing line between the two States? Give me a straight answer?

A. I am not acquainted with the whole coast. I have not gone into—

659 Q. You have stated that you are acquainted with these maps and I am only asking you about these maps?

A. No, you are asking me whether they show the deep water channel?

Q. No sir, I did not ask you that. Do they show the presence of the deep water channel now claimed by Louisiana to be the dividing line between these two States, any of these maps?

A. I think no one but the three associate counsel know exactly what is the channel they claim.

Q. You know too.

A. No sir, I am not a partisan. I am simply giving you evidence about those maps.

Q. I understand.

A. On the face of them, they show, in one case, what I would take to be an indication of a deep water channel, but whether it is precisely the deep water channel they claim to run along a boundary line, I don't know. Mr. Dymond am I supposed to know what deep water channel they are referring to.

Q. I object to your referring to counsel until I get through with you. The deep water channel named by the State of Louisiana to be the dividing line between that State and the State of Mississippi enters at the eastern mouth of Pearl river into Lake Borgne, thence through Lake Borgne north of Half Moon island, through Mississippi sound, north of Isle à Pitre, through Cat Island Pass channel, southwest of Cat island through Chandeleur sound, northeast of Chandeleur islands to the gulf of Mexico. Do you find any deep water channel following that route, upon any of these maps that we have just gone over?

A. If I had had a tracing before me that shows that exact thing, I think I could have shown you by the soundings that it was a fair channel; that is all I can say. I find no channel marked "deep water channel claimed by Louisiana."

Q. I think with the aid of the court's inspection we have made that plain enough. Going back to Lafon's map of 1806 I wish you would give me, as near as you can, the distance from Isle Malheureux south to the shore line at Point aux Assiettes.

A. The distance as shown on this map, which may not be the true distance, is exactly three leagues, three marine leagues. I have no scale of miles on this map. I have to give it in leagues.

Q. I notice you say now, as you said awhile ago, that this map may not be correct. Do you doubt its accuracy?

A. All maps on paper are subject to all sorts of changes, of shrinking, of spreading, as was explained by the map expert on the stand,

Mr. Hodgkins. In this particular case, where you ask me to give you the exact distance, a spreading of a very little of the paper by dampness or shrinking by dryness, will make a difference in my estimate, perhaps of a mile. It is not that I doubt the correctness of a map but all maps are subject to changes and measurements on maps, therefore, are subject to correction.

Q. How far is it, please sir, from what is marked on this map Seven isles, due north, to the Mississippi shore near Biloxi?

A. As shown on this map, six leagues and a quarter. That is, marine leagues.

Q. I notice on this Lafon map some thread like lines in Lake Pontchartrain; do they not indicate—state what they indicate?

A. I believe they indicate specially, shallow water, land that at certain times when the wind is outward is left bare.

Q. Now, we find one of those lines coming out of Pass Chef Mentour and turning southward—

660 A. But not continuous, only coming to the mouth of that bayou.

Q. Mouth of what bayou?

A. This little bayou there. Then it starts again and comes along to there.

Q. What is that point?

A. Point of Three Bayous.

Q. And then it goes on—

A. To Point Saint Malo.

Q. And enters what there? The north prong—

A. The north prong of Bayou Guillemard.

Q. And then continues to the northward—

A. As far as the entrance of a bayou without name, on the eastern shore.

Q. Then don't you find it on down the eastern coast to Baye de la Raux Chenes?

A. I find this mark indicating shallow water all along the eastern shore.

Q. This map of 1806 shows the seven islands that you have mentioned does it not?

A. Yes sir.

Q. Now, please look at the Darby map of 1816 and say whether it shows those islands?

A. It does not.

Q. The map before that of Mr. Ludlow, shows them?

A. Yes sir.

Q. But without name?

A. Yes sir.

Q. And it shows the indications of channel between Chandeleur island and the Mason islands and the Louisiana shore?

A. Yes sir.

Q. And the seven islands are also shown on the map of Melish are they not?

A. They are shown on the map of Melish; they are also shown on first map of Tanner; they are also shown on the Mitchell map.

Q. Can you tell from any indication on the Mitchell map whether they are credited to Louisiana?

A. They are colored the same as Saint Bernard parish.

Q. Does not Darby state that the section northeast of Bayou Terre Bœuf had never been surveyed previous to the date of this map in 1816?

A. He states this peninsula northeast of Bayou Terre Bœuf has never been surveyed.

Q. Bayou Terre Bœuf is the southern line of what is now Saint Bernard parish, is it not?

A. Yes sir.

Q. This map (referring to map of Mississippi, Louisiana and Alabama by La Tourrette 1839) colors Grand island and the islands north of that near Pearl river, Cat island and Ship island, to Mississippi, does it not?

A. It gives the same color as Hancock county.

Q. While, as you have already indicated, the map of Mr. Bayley in 1853, gives those islands the same coloring as Louisiana?

A. Yes sir, it does.

Q. There is no effort to show to which territory in 1806, the islands were supposed to belong?

A. No sir.

Q. The first colored map is the Darby map, of 1816, and he colors Cat island and Marianne island, to Louisiana?

661 A. He does.

Q. And Malheureux islands?

A. To Hancock county, Mississippi, territory.

Q. The next map then, by Mr. Ludlow, in 1820, does not undertake to color those islands to either State?

A. No sir.

Q. I want to ask you now, to look at Lafon's map of 1806, at Lake Pontchartrain and Lake Borgne, with reference to their physical appearance and conformation and compare that map with the Darby map of 1816 and see if there is not a very marked difference in the conformation of those lakes?

A. Yes sir, there is.

Q. Now, compare the Darby map of 1816 to the map of Ludlow of 1820 and see if there is not a marked difference—

A. There is a marked difference between the Ludlow and Darby maps.

Q. And also the Melish map, compare the Ludlow map, with reference to the shape of those lakes, with the shape of Lake Borgne and say if there is not a very marked difference?

A. They are on different scales but I think they are taken one from another, this is the same family.

Q. That is Tanner's map?

A. Yes sir, the first Tanner map.

Q. Now, on Mr. Tanner's first map, does not the coloring indicate that Chandeleur islands, Round island, Ship island, Cat island, St. Marie island, Malheureux islands, the same color as Mississippi?

A. The same color also as Saint Tammany, as parts of Louisiana.

Q. But they are not of the same color as that portion of Louisiana nearest to those islands?

A. The ground work you see, if this was etched and covered with little black spots as this, they would look exactly the same.

Q. Can you tell from that map to which territory or State those islands are most alike?

A. You couldn't tell to which parish they are most alike because there are parishes in both States left uncolored.

Q. I believe we have seen that Mitchell's map credits Round island, Ship island and Cat island and Malheureux islands to the State of Mississippi?

A. Not necessarily. It colors them the same as Jackson county, but Saint Tammany county is colored in exactly the same way, they are not colored the same way as Saint Bernard.

Q. They are nearer to Jackson county than they are to Saint Tammany?

A. But as to a question of coloring they use three colors.

Q. Mr. Tanner's map of 1834, with Graham's, gives Cat island to Louisiana, according to color?

A. Yes sir.

Q. I will ask you, if it is not true, that prior to 1812 Chef Menteur was not the principal water way out of Lake Pontchartrain to Lake Borgne? And whether it is not a fact that those English forts were built on Chef Menteur?

A. I believe that statement to be correct—oh, Chef Menteur, I merely answered the question as to Chef Menteur.

By Mr. DYMOND:

Q. Did I understand you to say that the forts were built on Chef Menteur?

A. I did not answer that. I answered the first part of the question, that the principal water way out of Lake Pontchartrain was Chef Menteur.

662 Q. Do I understand that it is simply your belief?

A. Yes sir, I stated that.

By Mr. McCLURG:

Q. The English built those old forts out there; they were built before 1812 were they not?

A. I do not know.

Q. By the English or French government?

A. Can you ask me that question again, about Chef Menteur?

Q. Yes?

A. Well, one of the maps we have seen shows that there was

entry that the steamboats followed, that was through the Rigolets, that however I think was subsequent to the date you name.

Q. But, prior to 1812 can't you say that Chef Menteur was the principal passage between Lake Pontchartrain and Lake Borgne?

A. I cannot say so, distinctly; I could find out.

At this stage of the proceedings, the hearing was adjourned by the commissioner until the 22nd day of April 1904, to be resumed at the same place at the hour of 10.30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 22, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed at the same place and at the hour of 10.30 a. m.

Present: Frank H. Mortimer, Esq., commissioner.

Hon. Walter Guion, att'y gen. of Louisiana.

Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Cross-examination of Mr. WILLIAM BEER resumed.

By Mr. McCLURG:

Q. I desire to call your attention to Document No. 11 filed by the State of Louisiana which seems to be a report made from the Department of Commerce and Labor at Washington, D. C. dated January 30th 1901, accompanied by sketches made by Mr. Hodgkins who has testified in this case. I notice sketch No. 1, undertakes to show the original boundary between Louisiana and Mississippi by a line drawn through Lake Pontchartrain into Lake Borgne. I will be glad for you to look at it and tell me the channel, if you can, it is not marked on the sketch, to which that line is drawn in passing from Lake Pontchartrain to Lake Borgne?

A. To answer the question I require to be shown a recent map, any map with names upon it, showing the opening to Lake Pontchartrain.

Q. I will ask the commissioner to show you the combination map taken from charts 190, 191 and 192, prepared by the State of Louisiana for this cause.

(Witness is shown map No. 17 being made of the charts 190, 191 and 192.)

A. It is the Rigolets.

663 Q. From an examination of the maps on yesterday, from map No. 19 produced by Louisiana, up to the map of 1866 I

believe it was, you found no markings which indicated the deep water channel which Louisiana now claims to be the dividing line between that State and Mississippi. I find on sketch No. 3, in connection with this report that we are now examining, a line which I presume to be the deep water channel mentioned and notice that it is stated on this sketch made by Mr. Hodgkins as "showing the deep water sailing line from Pearl river to the gulf of Mexico from the United States Coast and Geodetic Survey charts 190, & 191." Please look at this sketch and see if you agree with me as to that fact?

A. I agree with you on the fact that there is indicated on this map a deep water channel from Pearl river eastward.

Q. And that is intended to indicate what?

A. The legend indicates that this line shows deep water sailing line from Pearl river to the gulf of Mexico from the United States Coast and Geodetic Survey charts 190 and 191.

Q. Do you find anything on either of the three sketches attached to that report which indicates that that sailing line is intended, in any manner, to mark the boundaries between Louisiana and Mississippi?

A. On sketch No. 1 I find a line which terminates in Lake Borgne.

Q. Through the Rigolets?

A. Through the Rigolets and does not continue. On sketch No. 2 I find no channel line whatever.

Q. I show you Exhibit E which is marked coast chart 191, Lakes Borgne and Pontchartrain of Louisiana, and call your attention to the red line marking out of the Rigolets is it not?

A. Yes sir.

Q. And the most eastern mouth of Pearl river to the eastward. Tell me what that line seems to indicate?

A. The legend states that the line, as far as its junction with the second line, is the boundary line of Louisiana purchase 1803. The continuation, after the junction, is called the boundary line between the States of Louisiana and Mississippi.

Q. Is there any difference which appears upon the face of this legend, to distinguish it from the legend which seems to have been written on that line by the Coast and Geodetic Survey; in other words, if there is another legend on that line tell us what it is?

A. There is no legend up to the junction.

Q. And the junction is just southeast of the mouth of Pearl river?

A. Just southeast of the mouth of Pearl river.

Q. Eastward from that what is the legend originally placed on the map by the Coast and Geodetic Survey?

A. The first legend I find is a sailing direction coming just before the word south which is, west $\frac{3}{4}$ south, indicating a course. Under the word Louisiana in red, I find southwest by west $\frac{3}{4}$ west. Between the words and, and Mississippi I find the letters northwest by west $\frac{1}{4}$ west. Following the word Mississippi I find west $\frac{1}{4}$ north.

Q. Can you tell me whether the red line marking which indicate that that is the boundary line between the two States, was placed there by the Coast and Geodetic Survey in the original making of these charts, or whether it has been placed there under the the direction of the Louisiana authorities or by the attorneys in this cause?

664 A. All I could state is, that it seems to have been added to the original map; by whom there is nothing to show.

Q. Is it not true that this chart or map, Exhibit E, to the testimony introduced by the State of Louisiana in this case, is the first map or chart that you have seen among all of the maps and charts that have been introduced in this case, which undertakes to write on that deep water sailing line, the legend that it is the boundary between the two States?

A. I have seen a great many but I believe this is the first; this is the first chart submitted to me; all the others have been maps.

Q. But you have seen no legend, that is the point, as regards our present investigation?

A. My answers to your questions have all been according to the face of this chart.

Redirect examination.

By Mr. ZACHARIE:

Q. Will you please examine again the maps which you examined yesterday and state on which maps, if any, the body of water between the north coast of this disputed territory from Mississippi is denominated the Mississippi sound and I would call your particular attention to the lettering in order to say whether or not the lettering, the words Mississippi sound extend to the body of water lying between the shore of the disputed territory and Mississippi and west of Isle à Pitre?

A. Will you, for the purpose of comparison, let me begin these in reverse order of date?

Q. Yes. You understand the purport of the question fully?

A. Yes sir, fully. In the map of Hinman identified as map No. 33, the word Mississippi sound is present; the begin-ing of the first letter M is about mid-way between Point Malheureux and the western extremity of Isle à Pitre; in map of Wall identified as map No. 32, the words Mississippi sound appear, the first letter is mid-way between Malheureux point and the eastern extremity of Isle à Pitre; in the map of Gray of 1878, identified as map No. 31, the words Mississippi sound occur, the first letter is immediately over the eastern extremity of Isle à Pitre; in the map of Hardee of 1871, identified as map No. 30, the words Mississippi sound occurs, the first letter is opposite a point about $\frac{1}{4}$ of the distance between Malheureux point and the eastern extremity of Isle à Pitre; in the map of Schonberg of 1866, identified as map No. 29, the words Missis-

issippi sound appear, the first letter is just beyond the eastern extremity of Cat island.

Q. My question is to draw out whether upon these maps, the Mississippi sound is marked as extending into the water between this coast, between Malheureux point and Isle à Pitre, and the main land of Mississippi? Read the first question.

(Question read.)

A. It seems to me that is the best answer by my giving you the place of where the first letter occurs. I do not see how I can more clearly answer your question.

Q. I meant to ask you, Mr. Beer, to designate on these maps, whether the Mississippi sound, by lettering, on the maps, is
665 shown to extend westward of a line drawn from Isle à Pitre north and south to the Mississippi shore?

A. The statement that the first letter is opposite a portion of territory within that, is the answer to your question, the only answer that appears on the map itself.

By Mr. DYMOND:

Q. We desire to know specifically from each map, whether the word Mississippi sound extends westward of a line drawn north and south through Isle à Pitre?

A. Oh, yes, well of course, will I have to give you the reasons for such an answer?

Q. Understand, we simply want to get the specific answer, does it or does it not?

A. In the Hinman map of 1885, identified as No. 33, it does; in the map of Wall of 1882, identified as map No. 32 it does; in the map of Gray of 1878 identified as map No. 31, the word commences within a few miles of the boundary asked for, a few miles to the west of the boundary asked for; in the map of Hardee of 1871, identified as map No. 30, it is indicated to the west of the boundary named; in the map of Schonberg of 1866, identified as map No. 29, it is indicated to the east of the boundary named; in the map of Bayley of 1853, identified as map No. 28, it is not indicated at all.

Q. Does the name Mississippi sound appear on this map in any way?

A. It does not. In the map of La Tourrette, of 1839, identified as map No. 27, it is not indicated.

Q. What is not indicated?

A. The words Mississippi sound.

Q. Do they appear at any point upon that map?

A. They do not. In the map of H. S. Tanner of 1837, identified as map No. 26, the Mississippi sound is not indicated. In Graham and Tanner's map of 1834, identified as map No. 25, it is not indicated.

Q. When you say it is not indicated what do you mean by it?

A. I mean the words Mississippi sound as the name of a body of

water do not appear on this map. In the map of Mitchell of 1834 identified as map No. 24, the words Mississippi sound do not appear. In the map of Tanner of 1820, identified as map No. 23, the words Mississippi sound do not appear. In the map of Melish of 1820, identified as map No. 22, the words Mississippi sound do not appear. In the map of Ludlow of 1819-1820, identified as map No. 21, the words Mississippi sound do not appear. In the map of Darby of 1816, identified as map No. 20, the words Mississippi sound do not appear. In the map of B. Lafon of 1806, identified as map No. 19, the words Mississippi sound do not appear.

By Mr. ZACHARIE :

Q. You have stated that you consider yourself an expert in regard to the maps of the State of Louisiana. Will you please state what time and experience you have had in connection—will you please state what associations, if any, first, you are a member of or an officer of?

A. I am a member of the American Historical Association and represent in this State the Historical Manuscript Commission 666 which is a part of the American Historical Association. I am a member of the Historical Association of Texas, of Louisiana of Mississippi, and of the Southern Historical Association.

Q. Before you came to this country, were you a member of any historical association, and if so what?

A. I was a member of the Antiquarian Society of New Castle on Tyne in England.

Q. When did you first commence your researches in regard to the maps and geography of Louisiana?

A. When I was appointed librarian of the Howard Memorial library, in 1891.

Q. What researches did you make and where?

A. When my collection of maps of Louisiana became important I was asked to make an exhibit at the Louisiana Purchase Exposition and in 1902 I visited Europe and saw all the great map collections in the British museum in London and in the Universities of Oxford and Cambridge. I saw the great collection in the Bibliothèque Nationale in Paris. And in the archives of the departments of the army and navy, specially to see the manuscript maps of this district. In the year 1903, I, especially for this purpose, visited the map department of the Library of Congress, of the New York public library deposited in the Lenox library of the New York Geographical Society, and of the New York Historical Society. I also went through the collections in the Boston public library and of the Universities of Oxford and Cambridge, the collection of the American Antiquarian Society, and that of the New York State library at Albany. These collections, I should say combined—

Q. Wait a moment, did you, at any time, visit London in connection with this work?

A. With the historical work, I saw all of the collections of maps

in the map department of the British museum. I also, in London, paid special attention to the history of the Florida parishes which I discovered in the record office in London.

Q. Are you now preparing any work in connection with Louisiana?

A. I am preparing a bibliograph of the history of Louisiana for publication by the American Historical Association.

Q. How many maps do you suppose you have examined in connection with this subject?

A. I have examined at least 1,000 different maps and atlases, not all different articles, some of them being duplicates of those previously examined.

Q. Did you, at any time, visit the Universities of Oxford and Cambridge?

A. I visited both of them in 1902.

Q. For what purpose?

A. For the purpose of examining whatever material they might have bearing on the history of Louisiana.

Q. Did you, at any time, visit the great geographical exposition held at Antwerp?

A. I had the good fortune at Antwerp to see a special exhibit of geographical works which, on account of the Netherlands and Belgium having been the great centers of atlas printing, contained the greatest collection of geographical matter ever shown under one roof.

667 Q. You have spoken of your preparation of maps for the Saint Louis Exposition. How many maps in regard to Louisiana and its cartography have you in that collection?

A. Beginning with the map of Juan de la Cosa in the year 1500 which only indicates the gulf of Mexico, up to the year 1839, they number 190, the exhibit numbers 190 maps and atlases.

By Mr. McCLURG:

Q. From 1500 to when?

A. To 1839. The reason for showing the map of 1839, the collection was intended to get at the State formation of 1812, but two maps are included in the collection, one of Melish and one of the maps on which it is called Fredonia, the only map of the kind known.

By Mr. ZACHARIE:

Q. What was called Fredonia?

A. The United States called—it was the name originally proposed as a name for Louisiana.

Q. For Louisiana?

A. Yes sir.

Q. Now, in regard to the testimony that you have given in regard to the authors of these maps, whence has your information been derived?

A. It is very difficult to obtain information regarding map mak-

ers and has needed great study in the special cartographical works of the countries and periods; those I have consulted for the purpose of gaining information.

Q. Now, Mr. Beer, in all of the maps which you have examined, of Louisiana and Mississippi, have you ever found a map which gave this archipelago or peninsula here in dispute, to any other State than Louisiana; if so state what map?

A. I cannot answer that question. It is too great a call on my memory. I have seen too many maps.

Q. State according to the best of your recollection.

A. The greater number of earlier maps, especially in my collection, antedate division into States, antedate the acquisition by the United States.

Q. I am only speaking now, of those since?

A. I have not paid special attention to those since.

Q. Now, Mr. Beer, will you examine the Lafon map and the other earlier maps up to about 1830, and state, if you can, how long the distance is, as shown upon these maps, between the Mississippi river and the most easterly projection of Isle à Pitre?

A. By the scales of the respective maps?

Q. Yes?

A. You say between the Mississippi river?

Q. Yes?

A. You mean at New Orleans.

Q. No sir, I mean in the parish of Saint Bernard, the nearest point—

A. The parish of Saint Bernard is not indicated on these maps.

Q. Well, where the Bayou Terre Bœuf enters the Mississippi river?

A. That is more definite. I shall give my evidence as to all distances, as regards the particular map, not as to the Lafon map but as to the particular map on which I have measured it.

Q. Of course?

A. And it is therefore susceptible, of course I can deduct any differences. It is $13\frac{1}{2}$ marine leagues on the particular map of Lafon.

668 By Mr. DYMOND:

Q. Mr. Beer, before you measure the Darby map will you please return to the Lafon map and state what the distance is in land leagues if there be such a scale on that map?

A. There is a scale called Lieues Communes 25 au Degre.

Q. That is it?

A. It is $16\frac{1}{2}$ on the scale with the title Lieues Communes 25 au degre.

Q. Will you please now look at the Darby map and give us the distance as shown by it?

A. It is 36 English miles, from the point where Bayou Terre Bœuf is shown as entering the Mississippi river to the extreme eastern point of the peninsula.

Q. Now, the next?

A. In the Ludlow map Bayou Terre aux Bœuf does not form a junction with the Mississippi.

Q. Well, prolong the lines to the Mississippi and then start out towards the east?

A. From the point at which the line to the Mississippi from the nearest extension of Bayou Terre Bœuf, to the extreme eastern point of the territory the map of Ludlow shows 44 miles.

Q. What year is the Ludlow map?

A. 1819-1820.

Q. Take the next one?

A. In the map of Melish of 1820 the distance shown is about 42 miles. In the first Tanner there are three scales, American, geographical miles and French leagues; which will you take?

A. Take the American miles?

A. The distance shown is 52 miles.

Q. That is the Tanner map of 1820, 52 miles?

A. Yes sir. In the map of Mitchell of 1834, the distance shown 52 miles.

Q. Will you turn to some of the recent charts, say two of the most recent maps and give me the same measurement on their scales. Will you please look at the United States Coast and Geodetic chart No. 19, marked map No. 7, and give the distance as shown on this map?

A. There is no junction shown there.

Q. Will you please look at this map No. 7 and state whether the point thereon marked Poydras is the point from which you have commenced your measurements going eastward?

A. As nearly as possible the scale being much larger.

Q. Will you please designate the distance between the point marked Poydras on this chart and the most eastern extremity of Isle à Pitre, according to the scale on the chart, namely map No. 7?

A. Yes sir; just 50 miles.

Recross-examination.

By Mr. McCLURG:

Q. These measurements that you have been taking disclosing a distance from the junction of Bayou Terre Bœuf to the most eastern end of Isle à Pitre, have been roughly made by a piece of yellow blank paper and pencil, gave they not?

A. Yes sir. You put in the question measured to the extreme point of Isle à Pitre. Isle à Pitre is not designated in all of these maps, itself.

Q. That was the question, was it not?

A. Yes sir, that was the question. I have taken it to the point which might be assumed to represent Isle à Pitre; the distances are approximate.

Q. And Isle à Pitre, by that name, appears first on what map?

A. Do you mean the words Isle à Pitre?

Q. Yes?

A. For there is a territory which is clearly indicated to be Isle à Pitre. In chronological order, in all of the maps examined during this examination, I find the words Isle au Pied. Isle au Pitre first appears on the map of Schonberg of 1866. It next appears under the name of Isle au Pitre on the map of Gray of 1878.

Q. Do you not find it stated in one of Mr. Tanner's maps, that prior to the date of that map, that that territory had never been surveyed, I mean what we now know as the Isle à Pitre territory?

A. There is such a statement, but I do not think it is on there; I think it is on the Darby map.

Q. Yes, the Darby map of 1816?

A. I find a statement that it has never been surveyed, that the coast and interior are but imperfectly known. It does not mean that they are not known at all, but imperfectly known.

Q. These measurements you have made, are also uncertain, are they not, as to the scale used, whether of American miles, geographical miles or marine leagues?

A. So far as regards what is represented by the map itself, they are comparatively correct.

Q. To be brief on this point, your measurements seem to indicate a lengthening of the space between the junction of Bayou Terre Bœuf with the Mississippi river and the most eastern extremity of what is now called Isle à Pitre?

A. They show that delineation on the maps has lengthened.

Q. And don't you think, as a matter of fact, that these measurements which you have just been taking are somewhat uncertain; do they not lack in precision?

A. As the maps do.

Q. I mean to say, that because of the fact that the territory in the Isle à Pitre country was prior to 1816, as you have stated, not well known, that the maps may be more or less uncertain?

A. Certainly. The correct measurement is the measurement made on the last chart from actual survey.

Q. And that is the only one that you consider reliable, is it not?

A. That is the only one that can be verified to day.

Q. The cause of this lengthening of the line about which we have been speaking, may have originated at either end of the line may it not, or at both ends. I mean to say, may not the junction point between Bayou Terre aux Bœuf and the Mississippi river have moved somewhat westward as well as the territory to the eastward moved eastward?

A. The delineation on the map depended on the information in the possession of the map maker.

Q. And what that information was we cannot say.

A. We have nothing to show.

Q. You have been examined at some length, Mr. Beer, about the

Mississippi sound, with reference to its western end. You
670 seem to indicate its western boundary by the first letter M.

I will ask you on that point to begin with Hinman's map No. 33 of 1885, and tell me, if you can, whether that map indicates the junction between Lake Borgne and the Mississippi sound. Would you take the last E in lake to mean the eastern boundary of Lake Borgne or the last letter E in the word Borgne to mean the eastern boundary of that lake?

A. I understood the question of counsel to mean, not to put my opinion of the commencement of the waters called the Mississippi sound, but where for certain, the legend Mississippi sound began.

Q. Now, tell me where the legend of Lake Borgne ends?

A. The word lake ends at a point west of Pearl river.

Q. You have qualified yourself as an expert on these subjects, and I will ask you to indicate what you judge to be the dividing line between Mississippi sound and Lake Borgne on the Hinman map?

A. As indicated in the Hinman map, it is intended to show the body of water Lake Borgne terminated by the Pearl river and Point Malheureux. Beyond that it is intended to show a commencement of Mississippi sound.

Q. You mean beyond that, to the eastward?

A. To the eastward, yes sir.

Q. And that leaves Half Moon island in the Mississippi sound?

A. On this map, yes.

Q. And that is indicated by the coloring, to belong to the Louisiana coast?

A. Geographical divisions of water are divided by head lands; there is a head land which indicates that.

Q. Now, please look at Wall's map of 1882 and answer the same question?

A. The end of the name Borgne terminates north of Point Malheureux perhaps slightly to the east.

A. *The end of the name Borgne terminates north of Point Malheureux perhaps slightly to the east.*

Q. Then does not the Wall map of 1882 place the dividing line between Lake Borgne and Mississippi sound some distance further to the eastward than the Hinman map of 1885?

A. The terminal letter of this word, in this case, depends on the size of type used and not on a geographical conception.

Q. Is it not true that you do not place any particular significance upon the terminal letter or the initial letter in those two words, Lake Borgne and Mississippi sound?

A. Quite true.

Q. And so please, with Gray's map of 1878?

A. The position of the end of the word Lake Borgne is almost the same as in the Hinman map it is the same practically, *aprently* indicating a body of water terminating about Point Malheureux.

Q. But differs from the Wall map?

A. Differs from the Wall map distinctly.

Q. Now, look, please, at the map of Schonberg of 1866?

A. The position of Lake Borgne is similar to that in the last map.

Q. I will call your attention to the Hardee map of 1871 prepared under the administration of Governor Warmouth of the State of Louisiana?

671 A. The position of Lake Borgne is similar, in that it is within Point Malheureux and the point at the mouth of Pearl river.

Q. And differs does it not, from the maps you have previously examined?

A. It differs from one of them. It does not differ from the last but it does differ from Wall. The difference which I name, in speaking of this map was, that in this map the word Mississippi sound begins furthest westward.

Q. Now, see if it does not differ with the beginning of the M, from the Schonberg map?

A. I was speaking about Lake Borgne. The beginning of the M does differ from all the other maps.

Q. And in the Schonberg map the M is to the east of Cat island?

A. Far east, yes sir. I was alluding then to Lake Borgne.

Q. Yes I beg your pardon. I believe you stated there was no lettering on 'he Bayley map and those previous to that on up to B. Lafon's map of 1806, indicating the Mississippi sound?

A. I did so state.

Q. Then I put this question to you. Are not these maps uncertain in defining the junction between Lake Borgne and the Mississippi sound?

A. These maps indicate the information that was in the possession of the makers and varied with that information.

Q. And they do indicate that the different makers had different information?

A. Yes sir.

Q. Now then, I will ask you to do me the kindness to take your compass, if you have one, and give me some measurements of the Mississippi sound beginning at the Lafon map of 1806?

A. The measurement by the compass in my hands is not as certain as the measurement by paper. I will do what you wish.

Q. We want the most correct measurement.

A. A measurement by the paper in my hands will be the most correct.

Q. Well, what is the matter with the compass?

A. It depends on the sight very much as to whether a particular line—when you are measuring a small thing it depends on the weakness of the sight.

Q. I prefer the compass to paper?

A. You may have the compass.

Q. I will be glad to have you give me on these maps up to 1885,

a measurement of the distance from the center of the most eastern or southern mouth of Pearl river due south to the main shore of Saint Bernard parish or what appears to be now Saint Bernard parish.

A. It is less than six leagues as given on the map of Lafon.

Q. Now, try the Darby map, please, on the same measurement?

A. You see here there is no distinction at all between the end of the mouth, but we can take it from that center, and then we can go a little, it was a little that way. Nearly 15 English miles, as shown on the map of Darby.

Mr. DYMOND: Counsel for the State of Louisiana now requests counsel for the State of Mississippi to make his measurements on some such basis as would be intelligible to the Supreme Court and along a definite line, defining a similar line in regard to 672 each map.

Q. I ask that my original question be read to the witness indicating the points where I desire the measurements taken.

(Question read:) From the center of the most eastern or southern mouth of Pearl river, due south, to the Louisiana shore?

A. As represented in each map?

Q. Yes. Refer now to the map of Ludlow?

A. Almost exactly 18 miles.

Q. The same question as to the Melish map?

A. Slightly over 18 miles.

Q. The same question as to the Tanner map of 1820?

A. Almost exactly 18 miles.

Q. The same question as to Mitchell's map of 1834?

A. Twenty-two miles.

By Mr. DYMOND: Counsel for the State of Louisiana now asks the witness if he is measuring in a north and south direction on the map last measured.

A. In each case I have——

Q. I am not asking you as to each case. I am asking you as to the particular map of Mitchell which you have just measured, whether you measured it on a line in a north and south direction?

A. No sir, it varied slightly to the east.

Q. Why did you vary it to the east?

A. Because I am asked to take it to the nearest point of land as shown by the map.

Q. You certainly don't answer the question then. The question stated on a line directly north and south?

A. No, to the nearest point of land.

Q. That is not what he said. His question will be repeated to you. His question was on a line directly north and south?

A. I must have a ruler then.

Q. All right?

A. I would like to have the question read to me please, the origi-

nal question. (Question read.) You said nothing about the nearest land.

By Mr. McCLURG:

Q. Nearest land due south?

A. In the case of the Mitchell map, that gives 29 miles. I understood your question to mean to the nearest land, and therefore have varied from the southern line. I must request to be allowed to take these measurements over because they all go right down into the bay here. That will give for the Tanner map, 23 miles—oh, that will change the whole of the measurements. The southern line on this map comes right on that line there and it is very difficult point to determine. On the Melish map it will give 22 miles. It is a hair's breadth in going due south, whether it will follow that line to there. Without very fine measurements it is impossible to decide on that map.

Q. You mean the Ludlow map? It is about the same as you took before?

A. Yes.

673 Q. Perhaps you had better look at the Lafon map, and get Darby's, you may examine that again if you like?

A. It is 16 miles on the Darby map. Now, owing to the map maker drawing this further to the east (referring to the Lafon map)——

Q. Drawing what further to the east?

A. Drawing this shore further to the east.

Q. The Louisiana shore?

A. The shore of Lake Borgne. It is 7 leagues, about 21 statute miles.

Q. With reference to those measurements which you have just taken, are not these maps uncertain as to the distance?

A. They are.

Q. You spoke of being a member of the Mississippi Historical Society. Will you tell us how you became a member of that association?

A. By election.

Q. Have you ever participated in any of its deliberations?

A. Never.

Q. You stated, when questioned by Mr. Zacharie a while ago, that you had examined certain maps from 1500 to 1839, I believe, that those examinations were made for the purpose of your——

A. For the purpose of more clearly and correctly cataloguing the collection in the Louisiana Purchase Exposition.

Q. But in all of those maps you made no critical examination of the exact contour or configuration of the Mississippi and Louisiana shores along this disputed territory?

A. In all that examination I paid special attention to the delta of the Mississippi.

Q. And that means by the mouth of the Mississippi river, does it?

A. The delta of the Mississippi includes from the mouth of the Mississippi I will say including the island of Orleans which commences at Manchac.

Q. Where does that delta strike the eastern coast of Louisiana northward?

A. The alluvial formation of the Mississippi commences on the north shore of Lake Pontchartrain and extends to the mouths of the Mississippi river.

By Mr. DYMOND:

Q. Will you please look at the map of B. Lafon, for identification called map No. 19, and published in 1806, and will you notice on this the peninsula called Orleans extending from the Mississippi eastward. I wish now, you would measure the distance from the most northern point of that peninsula, directly north to the Mississippi main land?

A. It is four and a half leagues.

Q. Will you now, please look at the Darby map of 1816, called map No. 20 and measure the distance on what you take to be in that locality the nearest point or the shortest distance between the points you have just measured from, and the shore line of Mississippi?

A. It is impossible to identify it on these maps.

Q. Will you therefore, then, please look at the Darby map and measure the distance from the most northern projection of the peninsula concerning which we have just spoken, the distance
674 between that and the shore line of what is now the State of Mississippi.

A. I am measuring on the outlines shown in black and not in color. It is nearly 14 miles, 14 English miles.

Q. Will you please now look at the Tanner map of 1819-1820 known as map No. 21, measure the distance from the most northern extremity of the peninsula which you have just measured from there to the southern shore of what is now the State of Mississippi and give the distance.

A. Approximately, $14\frac{1}{2}$ miles.

Q. Referring again now to the Lafon map of 1806, map No. 16, and the Tanner map of 1819-1820 and maps marked respectively maps No. 19, 20 and 21, will you please state whether the point from which you measured on the peninsula was or was not part of the main body of land as shown by the respective maps?

A. I measured from the most northern part of the main land as shown by the maps named.

Q. Did you, in any of these measurements, from these points, find a distance of 18 miles between the most northern point of the peninsula and the southern shore of what is now the Mississippi territory?

A. I did not so find.

By Mr. McCLURG :

Q. These last measurements that you made in answer to Mr. Dymond's question, you do not undertake to vouch for the accuracy of those either?

A. They are approximately correct, as shown by the maps.

Q. But the accuracy of those maps, as you stated before, depend on the information that the map maker had?

A. Yes sir.

By Mr. DYMOND :

Q. Were they as correct and as approximate as the measurements which you made in your cross examination by counsel for the State of Mississippi?

A. They were equally correct.

By Mr. McCLURG :

Q. You do not vouch for the correctness of any of them?

A. I do not vouch for the exactness of any of them.

At this stage of the proceedings, the hearing was adjourned by the commissioner, for recess, until 2 p. m., to be resumed again at the same place.

Resumption of Proceedings.

2 P. M.

Pursuant to adjournment, the hearing was resumed at the same place and date at the hour of 2 p. m.

All parties present.

675 Col. H. M. ADAMS, witness sworn and examined on behalf of the State of Louisiana, testifies as follows:—

Direct examination.

By Mr. DYMOND :

Q. What is your present employment?

A. I have charge of this engineering district, the work at the mouth of the river, work at the forts, work at Plaquemine.

Q. In the employment of what government are you?

A. United States Government.

Q. When you speak of this district, do you refer to the southern district of Louisiana?

A. No; I refer to the engineering district with the office here in this building.

Q. What territory does this embrace?

A. Not so much territory as works, as I stated before, the work at the mouth of the river, work at the forts, work at Plaquemine Bayou Teche, Bayou Lafourche.

Q. I believe you — a colonel in the corps of engineers of the United States Army?

A. Lieutenant colonel.

Q. How long have you been in Louisiana, Colonel, and connected with the work at the mouth of the Mississippi river?

A. I came here first in 1869; I was here five years.

Q. Where were you then located?

A. Here in New Orleans?

Q. When did you return after your absence?

A. Four years ago.

Q. Have you been in charge of the work at the mouth of the river during those last four years?

A. Yes sir.

Q. Did you have any connection with the work at the mouth of the river while you were here first?

A. Yes sir.

Q. Are you in any way acquainted with the Eads jetties which were constructed at South pass in the mouth of the Mississippi river?

A. Yes sir.

Q. What connection did you have with these jetties?

A. Since I came here in 1899 first I had charge of the inspection of the work done by the Eads estate.

Q. Was that before 1899?

A. 1899, yes, since the work was turned over to the United States I have had charge of the maintenance of that channel through South pass.

Q. Did you have any connection with this work when you first came to New Orleans?

A. At that time the United States was improving Pass à l'Outre by dredging; that was before the work on the Eads jetty began.

Q. When did the work on the Eads jetty begin?

A. About 1875, about that date.

Q. Did you have any connection with the work at that time?

A. No sir.

Q. As I understand then, your direct connection began about 1899?

A. With the work in South pass, yes sir.

676 Q. Have you ever had any occasion to notice any change in the surface level of the country in the neighborhood of the mouth of the Mississippi river, or of South pass and if so what have you noticed?

A. As to the general level of the country, no sir.

Q. Do you know whether or not, in connection with the Eads jetties there was any plane of reference by which Mr. Eads had to keep a certain depth of water in the channel of South pass?

A. Yes sir.

Q. Do you know whether there has been any change in the plane of reference used by Mr. Eads?

A. The plane of reference was defined by the act giving the work to Mr. Eads. He was to maintain a certain depth. There was a matter of construction of the law and the opinion was given by the Attorney General. At the time the work was turned over to me he was required to maintain a certain depth with respect to average high water.

Q. Was there any point established on the shore by which the depth was to be determined?

A. He had tide gauge at South pass, he had bench marks on shore.

Q. Was there ever any re-determination of the location of those bench marks or tide gauges in connection with the depth of water that Mr. Eads had to maintain, so far as you know, within your experience?

A. Why, our annual reports show just what was done, I didn't see it done. I don't know personally that it was done; but I understand that it was done.

Q. If it was done by some one else, who would it have been done by?

A. Mr. C. Donovan who was stationed there.

Q. Who was Mr. C. Donovan?

A. He is assistant engineer of the engineer's department.

Q. Of the United States Government?

A. Yes sir.

Q. How long has he been in the employ of the Government?

A. To my knowledge, since 1874.

Q. What is his reputation as a careful and painstaking man, so far as you know?

A. He is a very careful, accurate, painstaking man.

Q. Was he in immediate charge of the execution of your orders in regard to the work at South pass, while you have been in command there, or while this work has been in your charge?

A. He was, for two years, from 1899 to 1901; but for the past two years he has been here in the city most of the time.

Q. Well prior to 1899 was he in charge down there, locally, at the head of the passes, or at Port Eads?

A. At Port Eads, yes sir.

Q. Is Mr. Donovan well skilled in the avocation and duties with which he was by his office called upon to discharge?

A. He is.

Q. Do you know the direction that the Mississippi river current takes when it leaves the mouth of South pass and these other passes, whether it goes eastward or westward?

A. The indications on all of our charts are, that it trends to the eastward, after leaving the jetties.

Q. How far to the eastward. Have you ever had any personal observation of it to determine whether it did go to the eastward or westward?

A. I have never made observations myself, no sir.

677 Cross-examination.

By Mr. McCLURG :

Q. That is the general information, however, that you gather, from your position, that it tends towards the eastward after it passes out?

A. Yes sir.

Q. What was the occasion for Mr. Eads putting in those jetties?

A. The—to deepen the channel over the bar at the mouth of the pass.

Q. Is it not true, Colonel, that the channel is deeper up by Baton Rouge than it is at the mouth of the river?

A. Oh, yes sir.

Q. Is it not deeper by New Orleans than at the mouth of the river?

A. Yes sir.

Q. Is there any difference of opinion as to the effect of the levees along the banks of the Mississippi river with reference to scouring and deepening or filling the bottom of the river?

A. A great deal has been said and written about it.

Q. On both sides of the question?

A. On both sides, yes sir.

Q. Do you not know that eminent statesmen and scientists differ on that subject as to the effect of the levees with reference to the deepening or causing the bottom of the river to fill?

A. Engineers do not differ very much about that; statesmen may.

Q. They are governed largely by the reports of the Mississippi River Commission are they not, as to their sources of information?

A. I suppose they must be; the annual reports are made and printed and are laid before Congress every year.

Q. Are you familiar with the dates of the overflows of the Mississippi river south of Baton Rouge?

A. I have only general information; I know that we have had two recent high waters.

Q. When?

A. 1897 and 1903.

Q. Well, before that time?

A. I am not familiar with the dates, no.

Q. Are you not familiar with the fact, with the historical fact that between 1880 and 1890 there were one or two very great overflows, especially in 1882?

A. That is all of record; but the dates I do not carry in my mind. I would not like to speak positively about these dates.

C. DONOVAN, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Redirect examination.

By Mr. DYMOND :

Q. Where do you live?

A. I live in New Orleans at present.

Q. How long have you lived in New Orleans?

A. Since the 1st of July 1902.

678 Q. Where did you live prior to that?

A. I lived at Port Eads.

Q. Is that Port Eads, Louisiana, at the mouth of the Mississippi river?

A. Yes sir.

Q. How long did you live there?

A. Twenty five and a half years.

Q. What is your present employment?

A. I am civil engineer in the employ of the Government, known as assistant engineer.

Q. Of what Government are you in the employ?

A. The United States.

Q. How long have you been in the United States Government's employ?

A. Thirty years.

Q. In that space of time have you been continuously in the neighborhood or connected with the works at the mouth of the Mississippi river?

A. For twenty seven and a quarter years I have.

Q. How long have you been a civil engineer?

A. Thirty two years.

Q. How old a man are you?

A. I am fifty three.

Q. What is your present duty, in a general way?

A. Well, I am the principle assistant engineer under Colonel Adams. I have to do, more or less, with all the work under his charge, but principally the work at the mouth of the river, South pass and Southwest pass.

Q. Now, during the twenty five and a half years that you were located at Port Eads, what work did you have charge of then?

A. I had the inspection of the work done by Mr. Eads.

Q. What work was that?

A. Construction of jetties.

Q. At what point?

A. At the mouth of the passes, mouth of South pass.

Q. For what purpose were those jetties constructed?

A. For deepening the channel across the bar.

Q. Was that a shallow channel prior to the construction of the jetties?

A. Yes sir.

Q. What results did the construction of the jetties accomplish?

A. It deepened the channel from nine to 30 feet.

Q. Now, have you had, during your 25½ years' experience at Port Eads, occasion to notice the topography of that section of the country and the general surface level of the tide?

A. Yes sir.

Q. Did the construction work of Captain Eads come under your jurisdiction as the engineer in charge at Port Eads?

A. No; we had nothing to do with the construction work, only to keep a record of what was done, that is all.

Q. How was the depth of water to be maintained by Captain Eads to be determined, or, rather, how was the actual water that he did maintain, how was it determined as to depth?

A. Well, it was determined by reference to the planes of average flood tide. The law required that depths should be measured by the average flood tide.

Q. When was the first measurement taken, if you have any recollection?

679 A. In, sometime in 1875.

Q. Was that measurement taken under your supervision?

A. No sir. I was not there then.

Q. When was your first measurement taken?

A. We have had measurements from time to time since 1875. I went to Port Eads the 17th of December 1876 and ever since that the measurements were taken and they are being taken yet.

Q. In taking those measurements, is that done by sounding or is that done by sounding and also a reference to some particular established point?

A. What do you mean, measurements of depth?

Q. Yes?

A. That is done by soundings and then the soundings are reduced to a certain plane of reference. At the time we sound the tide may be a foot above that plane; we add a foot to the soundings to arrive at that plane; on the other hand the tide may be a foot below that plane, we subtract a foot to reduce to that plane. So that all our charts represent the depth of water at the same plane of reference all the time.

Q. Was this plane of reference a physical plane, or was it a calculated plane?

A. It was a plane fixed, on the start, by three months' observations of the tide and taking an average as the term implies, average flood tide, the average flow, the flood tides during three months.

Q. Was there ever any change in that plane of reference between the time you first visited that locality and began your duties of supervision, and the time you finally left?

A. Yes sir.

Q. What changes, if any, occurred and what produced them?

A. At the time I went there, the plane of reference was indicated

by a reading of $2\frac{76}{100}$ feet on a certain tide guage. When I left there that same plane indicated by a reading, $4\frac{3}{10}$ feet on the same guage.

Q. During what period of time was that, in years?

A. That was from 1876 to 1902.

Q. What difference in feet was there shown by that?

A. That would be a difference between $2\frac{76}{100}$ and $4\frac{3}{10}$, that is, a foot and $\frac{54}{100}$.

Q. What was the cause of that difference, so far as you, from your observation, were able to determine?

A. The cause, so far as we have determined, was due to the settlement of the tide guage.

Q. Did the tide guage settle of itself, or, did it settle with the land which held it?

A. It settled with the land.

Q. How was that fact determined?

A. It was determined by running a line of levels, what is known as precise levels, from somewhere in the locality of Baton Rouge, the high land there, down to the end of the jetties and they were repeated five years afterwards. I first made the determination myself finding a variation in the average flood tide from year to year and undertook to account for it, I thought possibly it was due to some extent to back water caused by building the jetties, and that if I put a tide guage out in the bay and determined the absolute Gulf level, if it was due to back water it would show on that guage because I should not get then the same reading on that guage that I got on this guage that showed variation. I found, however, that I got the same average flood tide in the Gulf as I did in the river, thus showing that it was not due to back water and consequently must be due to one or two causes, that is, to subsidence of the delta or change in the plane of Gulf level.

Q. Was there anything to indicate to you, any change in the plane of Gulf level?

A. No sir, and the changes in the average flood tide from year to year were such as to indicate that it was entirely unlikely that the surface of the Gulf, the Gulf level, would change in that way; it was more some years than others.

Q. As I understand you, then, in a period of about 25 years, you noticed a subsidence of $1\frac{54}{100}$ feet in the delta of the Mississippi river at the point you made your observations?

A. Yes sir.

Q. Am I, or am I not correct, in understanding that it was your conclusion this resulted from a subsidence of the land at that point?

A. Yes sir.

Q. Is that correct?

A. That is correct.

Q. Now, have you seen any other evidence that would indicate to you that the land in the neighborhood of Port Eads is settling so far as tide level is concerned, the tide level of the Gulf?

A. There is evidence to me, aside from any determination we would make. The water level bears the same relation to the banks, as far as our observation is concerned, now, as it did 27 years ago. But the banks are built up each year by the overflow on them. My opinion is and always has been that the subsidence of the delta keeps pace with the deposit from year to year. Other evidence is manifest. At the head of the passes when I first went there, there was a storehouse known as the lighthouse establishment. They had a little railroad and a truck on it that ran between two large buildings from a wharf between the two large buildings, to haul heavy materials on. That was abandoned after a while, but this track and the truck were left there. I dug the truck out of the mud. I suppose that was perhaps ten years ago. The last I saw of the track was about two years ago, and then it was about a foot and a half, possibly a little more, below the surface of the land. The land had formed over it. You could just see the railroad track sticking out of the bank. The bank was washed away, it is all gone now, the track has gone into the river but it was a foot and a half under the bank, the bank had formed over it.

Q. From your observations, did, or did not, that indicate a subsidence of the soil at that point, of a foot and a half?

A. Yes sir; it certainly did.

Q. Now, these observations that you have referred to, in determining the change of the plane of reference at the jetties, were those made with mathematical precision and accuracy?

A. Yes sir. We have there a self registering tide gauge which gives a continuous record of the tide, an apparatus run by clock work, so we can get the tide for every second of time if we wish. When we take off those rolls the record is made, up and down hill and valley arrangement, high tide and low tide. We take off from that record every day the high tide and low tide readings, and at the end of the month we take the average of the high tides and the average of the low tides and at the end of the year we determine the average flood tide for that year.

Q. As a practical result of these observations, were there any changes in the plane of reference, under the contract of Captain Eads?

681 A. Yes sir; the plane of reference was changed in 1895. Let us see, it was '95 or '96, I think, but it was applicable back as far as 1890.

Q. Were these observations to which you have referred made in any wise under the supervision of the Mississippi River Commission?

A. No sir.

Q. Were they reported to that body?

A. The Mississippi River Commission has had all our records. These sheets that are taken from this apparatus have been sent to the commission since some years ago so it has all of them.

Q. Was this change in the plane of reference, as a result of sub-

sidence recognized by the United States Government as a fact, and did it, as a fact, affect the contract of Captain Eads in any change, of your own knowledge?

A. I do not know that the Government of the United States recognized the matter of the subsidence of the entire territory but they recognized the subsidence of the tide gauge to such an extent that they changed the plane of reference one foot, because they considered that on account of the settlement, Mr. Eads was maintaining one foot more of water than, according to law, he was required to do.

Q. Are you familiar with the geological formation of that section of the country, in a general way?

A. Well, in a general way I may say I am.

Q. What is its geological formation, how was it made?

A. It was made by the deposit of sediment brought down in the water of the Mississippi river.

Q. To what, Mr. Donovan, do you attribute this subsidence as a geological phenomenon?

A. I attribute it principally to the fact that there is no foundation to that country, and any weight put upon it, causes a settlement, the greater the weight the greater the settlement. We have no evidence of any foundation there at all.

Q. When you say you have no evidence of a foundation, what do you mean; that you have no evidence of a foundation reasonably near the surface or do you mean that 1500 feet below the present surface level you would not find a solid bottom there?

A. I don't know about that. That is too deep for me.

Q. What do you mean then in regard to no foundation?

A. For example. I built a lighthouse out at the end of the east jetty; we built it right in the quick sand on a foundation of pilings, then 12 by 12 timbers laid closely on those pilings, two tiers of them, one tier crossing the other, giving a large bearing. That lighthouse settled nearly a foot in five years, and for all I know, I have no doubt it is settling yet.

Q. Do you or do you not, attribute this settlement to the fact that the land is becoming more and more compact as time passes?

A. Do I attribute the settlement to that?

Q. Yes?

A. That would be due to compression then?

Q. Of its own weight?

A. Compression of its own weight?

Q. Yes?

A. Its own weight because if that weight was removed, the settlement might possibly, in time, cease or become very small. The great weight we have on an area, for instance, to illustrate, we have a concrete wall of about two thousand feet to the end of the west jetty, that wall was built at an elevation of three feet above average flood tide. The surface of it now, is, about four feet under the mud, so that it has gone down about seven feet

in the mud. You can find that wall there yet, but you would not know that there was a wall there from any surface indications, the mud has formed over it and sea grass has grown.

Q. If you were to be asked what was the youngest part of the State of Louisiana, so far as its geological birth is concerned, where would you say the newest and youngest land would be found?

A. As far as my knowledge is concerned, it would be found at the mouth of the river.

Q. Why?

A. Why, because there is the greatest reason for land built processes there, due to the great volume of water going out there that is discharged by the Mississippi river.

Q. Is it, or is it not a fact, that there is a large annual increase in that vicinity, of the land that forms itself above water by the extending of the Louisiana Southern peninsula out into the Gulf?

A. Yes, sir, there is a large increase.

Q. Have you any knowledge as to the geological formation of the other portions of Louisiana?

A. No, I could not say anything at all from my own knowledge.

Q. Would you consider that other portions similarly formed and affected by the same influences, would be subjected to similar results?

A. I think they would be identical.

By Mr. ZACHARIE:

Q. You have testified in regard to the subsidence of the land in the immediate neighborhood of the jetties. Do you, or do you not, know, whether that subsidence extends further to the eastward in the Mississippi delta?

A. No sir. We don't know anything about it, only the determinations that we have made right along the banks of the river.

Q. Would it lead you to believe that it extends to the same character of soil?

A. It would lead me to believe that it extends wherever the sediment of the Mississippi river reaches.

Q. Or has reached?

A. Yes sir.

Q. This case involves territory 70 odd miles northeast of the mouths of the Mississippi, that peninsula of Saint Bernard which juts out to the eastward. Do you, or do you not believe that the same causes exist and would produce the same effects there, as those you have testified to in regard to the passes?

A. Wherever the waters of the Mississippi river reach, the effect would be the same. I have no reason to believe why the effect should not be the same.

By Mr. DYMOND:

Q. Did you ever see a vessel loaded with brick, that ran aground

or was blown up on the land, in some storm, near the head of the passes, or in that general locality?

683 A. No sir.

Q. You do not remember any incident where this vessel gradually sunk out of sight. She may have been outside of the passes?

A. No. I have known two instances of small vessels, sailing vessels, grounding outside and sinking gradually into the mud.

Q. Did those vessels eventually disappear, masts and all?

A. No sir; the masts were eaten off by the toredo and they fell in the water before they had time to settle.

Q. Have you ever had occasion, in your 25 years' experience right at the mouth of the Mississippi river, to notice the direction that the current took as it left the mouth of the river and entered the gulf of Mexico?

A. Yes sir.

Q. What direction does that current take?

A. It goes to the westward.

Q. You heard Colonel Adams state a moment ago, that it was his impression that the charts indicated that the current went to the eastward; does it go to the eastward?

A. No sir, it goes to the westward.

Q. Do you know that from personal observation and experience?

A. Yes sir.

By Mr. ZACHARIE:

Q. What has been that experience and observation; how did you determine that?

A. I have determined it by making observations of the velocity of the current by putting floats in the water and locating them every minute or so of time, plotting them on the chart. The trend is decidedly to the westward, as was evidenced to Captain Eads in building the jetties. You notice he has got considerable of a curve in the jetties; the idea of curving the jetties was to throw the flow of the water into this westward current, instead of building out and striking it directly.

Q. Is there any evidence of this trend of the current to the westward, in the deposit of the silt of the Mississippi river?

A. Decidedly; the west side builds out, for instance, South Pass jetty, the west jetty is four thousand feet shorter than the east jetty. The jetties we are building at the Southwest pass, the west jetty is six thousand feet shorter than the east jetty; it builds out more rapidly on the west side. Another evidence in the case of South pass is, whereas the land on the west side has built out nearly to the end of that jetty, there has been no accretion on the east side at all; on the contrary the action of the sea has been there to drive back the shore, which has been receding for some years, that is, for the reason that this trend of the current to the westward is so great that

there is no chance for the sediment to go to the eastward and up in behind the east jetty.

Q. From your observations in regard to the Mississippi river, do you think that since the levee system of Louisiana has been completed, that there has been any deposit of silt from the Mississippi river to the eastward of the mouths of the Mississippi river?

A. Well, there has been a deposit to the eastward where the river water reaches to the eastward, for instance, below the forts where there are no levees the water is flowing over the whole country
684 there, and wherever that river water reaches no matter how far, that water carries that sediment.

Q. Do you know, or can you approximate, to what distance that overflow might extend?

A. Well, no, that would be mere guess work.

Q. Is it, or is it not, a fact, when the Mississippi river water meets the density of salt water of the ocean, that silt is precipitated by the contact?

A. Well, as I am under oath, I cannot say of my own personal knowledge that it is. My opinion would be that it is.

By Mr. DYMOND:

Q. Did any of these discharges, or do any of these discharges of water from the mouths of the Mississippi river, reach as far north, in their deposit, as the Saint Bernard peninsula which is lying south of Mississippi. I will show you, in order that you may intelligently answer the question, the United States Coast Survey chart No. 19, marked map No. 7. If the trend of the Mississippi river be westward after the current leaves the mouth, where it enters the Gulf, and with the completion of the levee system above Fort Saint Philip, would there be any deposit as far north as the area in the neighborhood of these red ink lines on map No. 7?

A. It is possible that there would be, but it would be very light material.

Q. Would it have any appreciable effect in forming or affecting the topography of that section of the country immediately in the neighborhood of the red ink lines?

A. Well, wherever there is a deposit it is affected, in forming the topography.

Q. If the current of the Mississippi river runs westward, what distance would any water have to travel northward through the salt water of the Gulf in regard to reaching the locality concerning which you have just spoken?

A. I could not tell the distance unless I would measure it.

Q. Well, just measure it?

A. About 50 miles.

Q. With the levee system completed as far down the river as Fort Saint Philip and in fact extending now down to Olga post office would the water coming from the mouth of the Mississippi deposit any appreciable sediment at a point 50 miles north?

A. Well, as I stated before, it is possible there would be a deposit but it would be very light, extremely so.

Q. If you were told, Mr. Donovan, that Louisiana was made a State in 1812 and her boundaries described in the act of Congress and that evidence has been produced in the trial of this case showing the effect of storms and subsidence in the area in dispute between the States of Louisiana and Mississippi, would you or would you not, in your opinion, consider that any sediment travelling northward 50 miles from the mouth of the Mississippi river could and would affect this disputed area in any way to compensate for the destructive and disintegrating influence of storm and subsidence?

Mr. McCLURG: Mississippi reserves an objection to that question on the ground that the witness has not qualified himself as an expert.

685 A. My opinion would be that the deposit, as I said before, would be so slight that the effect of storms upon an area like that would very much more than offset any deposit that could possibly take place, because I know the violence of the storms that have visited that locality.

Q. Have you ever, in your 25 years' experience, had occasion to go through any storms at the mouth of the Mississippi river?

A. Yes sir.

Q. What was the first storm you ever experienced?

A. That was in 1882.

Q. What velocity, so far as you know, did the wind attain there?

A. 105 miles.

Q. What destructive effect, if any, did it have?

A. It didn't have—just in that immediate locality none at all.

Q. Why not?

A. I guess because there was nothing to destroy.

Q. Did you have any opportunity to notice the storm, its appearance, or did you have any occasion to notice it as a convulsion of nature in any way and can you describe it?

A. Yes sir; I had occasion to go out of my house and go through it.

Q. What was its tide effect?

A. It was simply a violent wind storm and the wind was constant from about a northwesterly direction, it was not variable, it was just a constant hard blow.

Q. Did it have any effect on the tide?

A. Yes sir, it had—well, not very much effect on the tide in the river; of course it drove the water up into the bay and over the land between the river and the bay.

Q. What tide resulted from the storm?

A. I don't remember just that storm; I think it was something like—I don't remember just what it was; it was considerable above

the ordinary tide but I do not remember what it was; that is all a matter of record.

Q. Was the 105 miles the maximum velocity of wind attained?

A. Yes sir.

Q. Did the instrument survive that?

A. Yes sir, during that storm it did.

Q. What was the next storm that you have any knowledge of, in that locality?

A. Let us see, 1882, 1893, there was another storm in 1888 but I was not there.

Q. What was the next storm that you, yourself, went through, after the storm of 1882?

A. 1893.

Q. What was the maximum velocity attained by the wind on that occasion?

A. I don't remember that; as my memory serves me I believe the aerometer was disabled. The cups were blown away so we did not get a record.

Q. What had it attained when the instrument was destroyed?

A. I think it was about 50 miles.

Q. Did it, so far as your observation went, increase in velocity, subsequently to the time that you noticed it?

A. Yes sir, there was a greater velocity than that.

Q. How did it compare with the first storm you testified about?

A. As far as velocity of wind was concerned, I do not think it was as severe.

Q. What was the effect produced by the water?

686 A. The water effect was about the same.

Q. From what direction did that storm come?

A. From the same direction, northeast.

Q. Did it demolish any buildings in that locality?

A. No sir. The only injury we have sustained at Port Eads from storm, was in the last storm, in 1901.

Q. What injury did you sustain then?

A. There were two or three buildings wrecked, some of our floating plant was lost from its moorings and sunk in the channel. That was the highest sea that I ever have known in the South pass.

Q. What height did the waves attain?

A. Well, my judgment is, that the waves were fully ten feet. They were so bad that the pilot steamboat Underwriter, a large boat—

Q. Seagoing vessel?

A. Seagoing vessel, would not turn around in the pass; she was at Port Eads and wanted to go below but the pilot would not turn her around in the channel.

Q. He was afraid she would sink?

A. He was afraid she might turn over the sea was so heavy.

Q. Did you experience any other storms beyond those you have mentioned?

A. I don't remember now the dates. There have been other storms but I can't tell the dates. I have a record of them all.

Q. You mentioned a moment ago, that this shore to the eastward was being gradually washed away. What is the character of that soil; is that the sediment deposited by the Mississippi river?

A. Same character, that is the sediment from the Mississippi river.

Q. Is it covered with grass in any way?

A. Yes sir.

Q. What caused it to wash away?

A. It is caused by the action of the sea. Heavy sea washing on the bank, you know, and very often there is considerable drift wood along there. When the heavy seas throws that drift wood against the bank it tears the bank all to pieces and when the sea recedes it takes a little material each time and the shore gradually washes away.

Q. Is that due to the heavy winds?

A. The heavy seas?

Q. Yes?

A. Yes sir.

Q. And the storms you have referred to?

A. Yes sir.

Q. Have you had any opportunity of calculating the amount of erosion that has occurred, as a result of this effect of the heavy seas and storms?

A. The shore erosion?

687 Q. Yes?

A. No sir.

Q. Could you say how many feet, in a rough way, it had washed away since you first knew it?

A. That is, on the east side and over a limited area, yes sir, in making our surveys along the jetty when outlining this land, just that adjacent to the jetty, that is all. I located the shore line this year, a year from now I will locate it again and find it has gone back as much as 200 feet in places.

Q. In a year?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. You do not undertake to speak as an expert witness, as I understand it, Mr. Donovan, except in your particular profession as an engineer?

A. No sir, I am not speaking as an expert at all.

Q. And you never made a special study of this subject of deposits otherwise than as affecting your immediate vicinity?

A. I have not.

Q. I understand you to say that your observation has been that

the accretions from the Mississippi River overflows, or sediment brought down and deposited by the Mississippi river, as a general rule has compensated the subsidence?

A. Yes sir.

Q. Now, in taking your measurements on this map shown you a while ago map No. 7, you measured a distance of 50 miles up to the southern point of those blue lines?

A. Yes sir.

Q. Look at that map so that you may understand. The territory in controversy extends from about that point northward to the Mississippi shore and the Mississippi shore must be about 75 or 80 miles from the mouth of the Mississippi river where you took your measurements from?

A. Yes sir.

Q. Now, if it be true that levees have been completed down the east bank of the Mississippi river to English Turn in 1750 so as to shut up the mouth of Bayou Terre Bœuf, do you think, and you will notice that Bayou Terre Bœuf leads in the southern portion of this territory in dispute, if the junction of Bayou Terre Bœuf with the Mississippi river was closed in 1750 by a levee, do you think there can have been much effect on this territory in dispute, since that time, by deposits in the Mississippi river, from that source?

A. If that is cut off by levees there could not be any deposit in there could there?

Q. That is what I want to ask you.

A. No; I should not think there would be any effect if the levee cuts it off.

Q. You know Major Harrod?

A. Very well.

Q. He testified that the levee was completed down below there, according to my recollection, in 1750. Now, you cannot testify with any degree of certainty at all, from your 27 years' experience, as to the subsidence of the land in this disputed territory?

A. Nothing at all; I know nothing about it.

688 Q. And where you say there has been a subsidence of something over a foot, that is in what you term the newest part of the State of Louisiana?

A. Yes sir.

Q. Do I understand you to say that the trend of the river has been westward out of the mouths or passes of the Mississippi river during this 27 years that you have been there?

A. Yes sir.

Q. And would not the silt deposited, trend in the same direction?

A. Surely.

Q. To the westward?

A. Yes sir.

Q. Did you ever experience any trouble with muskrats down there in effecting the subsidence of the soil?

A. There are some pretty large ones. Their weight, I think

would cause some subsidence, but they trap them so rapidly, get them out of the way, I don't know whether for that reason or not.

Q. How does the alligator fare down there, is there much war made on him?

A. Oh yes, the alligator has practically disappeared from the locality, I see one there occasionally.

Q. It has been testified here by a very prominent citizen of this State, that the cause of this subsidence was the decaying of vegetation and the maintainance of the levees and the multiplicity of the muskrats, especially since the alligators have been killed who were deadly enemies to the muskrats, and the storms. What do you think of those four causes for producing a subsidence of the soil?

A. Well, I do not think very much of them. Subsidence is entirely due to the deposits that are made from year to year.

Q. Do you know the distance, Mr. Donovan, from, say North pass around the mouth of the Mississippi river along the shore line to Sabine river?

A. No sir, I do not.

Q. How far is it, if you know, from North pass around to the entrance of the Southwest pass?

A. I do not know that.

Q. Where is your work here at the mouth of the Mississippi river?

A. It is at those passes, there is South pass and this is Southwest pass.

Q. In those two passes?

A. Yes sir.

Q. How far is it from the forks or separation of the river into these different passes, out to the sea point of South pass?

A. It is 12 miles and a half from there out to the sea end of that jetty. It is 15 miles between these lights on the Southwest pass, and on Pass à L'outré I don't know.

Q. And North pass?

A. I don't know exactly the distance.

Q. To what point has the levee been completed, Fort Saint Philip, up here?

A. I don't know; it is below the forts, it is some distance below the forts.

Q. Do you know how far it is from the city of New Orleans to this lighthouse here where the river branches off into the different mouths of the river?

A. 94½ miles.

689 Q. Which of these two passes that you are familiar with, South pass and Southwest pass, do the accretions form on more rapidly?

A. Well, Southwest pass.

Q. That is a deeper channel?

A. Yes sir, that is four times as large as South pass.

Q. What is the average width of that pass, up to the head of the passes?

A. The average width, I believe, is about 400 feet.

Q. And its depth is about 30 feet now?

A. The average depth of Southwest pass would be more than 30 feet now; the average depth would be not less than 35 feet.

Q. Now, the deepening of the channel out of those passes naturally lets the water flow, out of the river more rapidly?

A. Yes sir.

Q. And the more rapidly it flows out, the less sediment it deposits before it gets out?

A. Yes sir.

Q. Are you familiar with the overflows between New Orleans and the mouth of the river during the last 25 years?

A. Well, I am only familiar with them in, just as a matter of observation, coming up and going down the river when the country happens to be overflowed.

Q. Can you undertake to say about how many general overflows there have been during that time?

A. What do—

Q. There was one in 1898, was there not?

A. What do you mean, those overflows due to storms?

Q. Overflows from the Mississippi river caused from crevasses or any other cause?

A. Caused by crevasses, I don't know.

Q. You do not keep any record of that?

A. No sir.

Redirect examination.

By Mr. ZACHARIE.

Q. Have you observed, or do you know, what is the effect of muskrats in that section of the country burrowing under the crust of the marshes?

A. No sir; I never knew they burrow under the crust. I thought they built these houses out in the marsh; we see those bunches you know, out in the marsh.

By Mr. DYMOND:

Q. Where do they get the stuff out of which they build the hill?

A. That is this broken cane, you know, it is not built out of mud.

Q. Did you ever fall into a muskrat hole?

A. No sir.

Recross-examination.

By Mr. McCLURG.

Q. You are not an expert on muskrats either?

A. No sir.

690 At this stage of the proceeding the hearing was adjourned until April 23rd, 1904, to be resumed at the same place and at the hour of 10.30 a. m.

FRANK HASTINGS MORTIMER,
Commissioner.

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Resumption of Proceedings.

NEW ORLEANS, April 3rd, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m.

Present: Hon. Frank H. Mortimer, commissioner.

Hon. Walter Guion, att'y general of Louisiana.

Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

JAMES R. BECKWITH, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. You are a resident, I believe, of the city of New Orleans, are you?

A. Yes sir. And have been since the winter of '59 or '60, with the exception of two years and a half during the war.

Q. This dispute or this case, pending between the States of Louisiana and Mississippi, concerning the ownership of territory, lying south of the Mississippi main shore line, and north of the southeastern portion of Louisiana, includes the area commonly known as the Louisiana marshes. Have you ever had, on any occasion, an opportunity to go about or through or near that territory?

A. I am not familiar with any portion of the Louisiana marshes excepting that soft mud marsh that lies between the Chef Menteur and the Rigolets and from there to Pearl river.

Q. Well, the territory in question is just south of the area that you have just described. Did you ever have occasion to make any trip through the Rigolets or Chef Menteur out through the northern portion of Lake Borgne along the Mississippi sound?

A. Frequently.

Q. About when were these trips of yours made?

A. I made a number of them; I cannot now say how many, prior to the construction of what was known as the New Orleans Mobile and Chattanooga railroad across that marsh.

Q. Is that what is known as the Louisville and Nashville railroad?

A. Yes sir. It had several names, New Orleans and Mobile at one time, but originally it was the New Orleans, Mobile and Chattanooga railroad.

Q. About how old a man are you Mr. Beckwith?

A. On the 23rd of last December I was 71 years old.

Q. You are a practicing attorney in the city of New Orleans?

A. Yes sir.

Q. How long have you been practicing law?

A. In New Orleans?

Q. No, generally?

A. Since 1852.

Q. Were you here about the time of the war?

A. I was here from the time of the ordinance of secession and before, up to the first of August or approximately the first part of August, I might say, 1861. I was away from here until about the middle of October 1864. Excepting that time I have been here all the time.

694 Q. Were any of the trips that you have referred to, made about the time concerning which you have just testified?

A. Yes sir; I made two or three trips in 1860 and 1861, and then I made another trip through there I think sometime in fall of 1865.

Q. On any of these trips, did you ever experience any storms?

A. In 1865, after the surrender, and it must have been in October, I think—

Q. After what surrender?

A. The surrender of the Confederate armies; the surrender I

refer to was the surrender of the trans-Mississippi department under Taylor and Smith.

Q. Will you now proceed to tell us what happened on this occasion?

A. I was compelled, by business, to go to Apalachicola. At that time the only method of getting there was on public transports.

Q. Were those Government transports?

A. Yes sir. There was a large flotilla of those light draft transports here that had been gathered in aid of Cauby's expedition against Mobile. I obtained transportation on a Government transport through the quartermaster, from New Orleans to Apalachicola. I boarded the vessel, she was at anchor off West End. The wind had been blowing quite severely for two days, I think from an easterly direction. The water on this side of Lake Pontchartrain was high but not very much disturbed. It was thought safe to start on the trip. We got over towards the Rigolets and the sea became so heavy that it was not thought safe to go out into the sound. The master, I remember, expressed some apprehension that he might strike the bottom with his draft in the high seas.

Q. What draft was that boat drawing, do you recall?

A. I only remember that it was a side wheel vessel with fore and aft rig, and I presume was drawing six or seven feet, I
695 should judge, from the construction of it. I hardly think they would have attempted to go through the lake with much greater draft. As we got over on the other side the master became alarmed and did not think it safe to go out into the Mississippi sound and he went to anchor somewhere between Point aux Herbes and the Rigolets. I think we were nearer to the mouth of the Rigolets than we were to the Point aux Herbes. Two anchors were gotten out and we had a fair lee, though the vessel rode very uneasily. At that time I represented parties in New York who contemplated the construction of a road to Mobile involving a permanent way across that swamp, and I was, like every citizen of New Orleans, interested in the question of overflow from the rear, and so the situation was one of particularly special interest to me. I went up on the ratlins of the foremast and I think I staid there from the time we anchored which was probably one o'clock until dark, overlooking the marsh. The sea was coming over there with tremendous velocity; the whole marsh, as far as I could see, was white with breakers.

Q. Was that to the southward of where you were; were you looking to the southward?

A. I was looking towards the Lake Borgne side.

Q. To the southeast?

A. Yes sir, to the southeast, and we, I remember, were pitching very considerably. Of course it was very tiresome to hang to the rigging. I made up my mind then, that the volume of water coming across there, breaking over the marsh, was far greater than any amount that could come through the Rigolets or Chef Menteur or

any of those small bayous. I watched the matter with a great deal of care and a very considerable volume of debris was coming, tufts of grass and small bushes which looked as if they had been torn from the banks of the bayous or torn up at least. Well we remained there all night and the next morning the wind had shifted around to the northward and about ten o'clock, as near as I can recollect, they got up the anchors and went through the Rigolets.

696 It was very rough but the wind had abated or changed its direction and we went out through Ship Island pass.

Q. Did you, on this occasion, happen to notice any indication of any disintegrating effect produced by the storms, on the land, in the shape of floating grass or debris?

A. Yes sir. I stated, that a very considerable volume of debris consisting of tufts of grass apparently torn up by the roots, and small bushes where the drift was very considerable, it drifted by us and it attracted my attention, particularly in view of what I stated, the proposed construction of a permanent way across the marsh. The feasibility was a matter of a great deal of dispute between engineers, whether it could be done or not.

Q. Was this condition of wave tossed area, as far as you could see to the southeast?

A. As far as I could see.

Q. About how much water was covering this area in depth, first say how deep were the waves, how high rather?

A. It is a little difficult to describe waves running over a low marsh unless you have seen them. As far as I could see towards the Gulf they seemed quite high, but they came in a series of long waves, flowing and foaming, and of course in the interval between the waves you could see the grass, but they came coaming if you know what that is.

Q. Have you any idea as to what depth of water would have been over the marsh?

A. Well, it would necessarily be higher on the Gulf side because the marsh would be considerably of an obstruction in the way of the water coming over to this side, but the water was probably over three feet above the normal level.

Q. Did you ever have occasion to experience another storm in that locality?

697 A. Yes sir; shortly after the construction of the road to Mobile.

Q. You refer now to the present Louisville and Nashville railroad?

A. Yes sir, the present Louisville and Nashville railroad across there. I was coming, I think from Washington, which must have been in '71 or '72 or '73, along there, and there was another very severe gale on the Gulf. When we reached what is known as English Lookout, we could not get any further.

Q. Is that what is called Pearl river?

A. It is this side of Pearl river.

Q. When you say this side, which side do you mean, on the New Orleans side?

A. On the New Orleans side.

Q. On the New Orleans side. It is near one of the branches of Pearl river?

A. I am not certain whether there is one of the branches of Pearl river that comes in there, but it is the last high land before you get to the salt marsh; we were stopped there. The marsh between English Lookout and the Rigolets bridge was all under water and it was considered unsafe I suppose, and perhaps impossible to go over the track. I got out of the train for the purpose of investigating the matter from that side of the marsh, and went along the shore there as far as I could go on that high land, and I found practically the same condition, you know, the sea breaking over the marsh, and it was difficult to determine the exact edge of the marsh except by the character of the break and the water was chasing across there just substantially as it did when I saw the storm from the open side, excepting, of course, the breakers were heavier.

Q. Did you have occasion to notice whether there was or was not any debris or disintegrated earth and turf on this second occasion?

698 A. I could not determine that because I was practically to the windward of it and not to the leeward; and could only get that where the drift was to the leeward. But that interested me for the reason—and why I remember it so distinctly—that in 1869 and 1870 I was city attorney—

Q. City attorney of the city of New Orleans?

A. Yes sir. A scheme had been devised, a very expensive scheme, of a revetment along the lake. It was a pet scheme of Mr. Bell who was then engineer. It was a tremendously expensive revetment and had been partially completed from what we now know as Bucktown, the line of Jefferson parish, down towards the New canal.

Q. You are referring to Lake Pontchartrain?

A. Yes sir, to Lake Pontchartrain. Well, it was proposed to carry it clear along the whole lake front and the expenditure was so enormous and the result of course seemed to me in an engineering sense so inadequate for the reason that in high water the banks of the canal were sources of danger, and the city was in no condition to embark millions in that scheme, that I energetically assailed it in committee and in the council and succeeded in arresting the construction at New canal, assuring the city, in my opinion, the city authorities, that the same money expended in revetting or increasing the resisting capacity of the roadway of the railway across the marsh would afford them better protection. And the time I witnessed this storm was after I had resigned; but of course I was interested in it in getting data to see whether my judgment about it was right. Well, we were detained there sometime, until everybody got nearly starved to death. Two or three gentlemen and myself

699 chartered a division hand car and went back to Bay Saint Louis, thinking there must be a washout and uncertain how long it would take to repair it. The wind went down and changed its direction. We chartered a fishing vessel and came to New Orleans.

Q. How long did the break continue in the road at that time if you know?

A. It was 30 odd years ago and I could not tell. I simply know that the road was suspended for a considerable time and I know that afterwards, immediately afterwards, they adopted a system of more openings in the road, and a wooden revetment on the Gulf side in places.

Q. Was that revetment for the purpose of preventing the washing away and the destructive influences of storm?

A. I presume so; it could not have been for any other purpose, and it was quite efficient for that, because afterwards I went across that road when there was a southeast gale on and saw from the openings the water was perceptibly much higher on the Gulf side than it was on the other showing there was not a free exit through.

Q. Did you notice any destructive effects of either of these storms in the locality where you were at the time you saw them?

A. You can hardly tell what is going on under a sheet of foaming water. I have stated the indication of abrasion, in the drift. It was impossible for anybody—we were at a distance may be of 500 yards from the shore, and it looked like an immense sea of breakers and the breakers came over into the lake enough to disturb it, the condition of the vessel very much too, kept it pitching. I remember there were some furloughed Confederate soldiers that had transportation and they got very sick.

Q. Would these storms that you have referred to affected similarly the locality to the southeast of the point from which you made your observations?

A. They would if the resistance was the same. Of course
700 the abrasive action of the sea in the dynamic energy of the blow and the wash that comes from the accumulated water. I know nothing of the character of the shore and those islands and the marsh south of there, as to their capacity for resistance.

Q. Will you please look at this map marked No. 17 and upon being pointed out the Rigolets to the northwest with the L. & N. railroad crossing thereon, and your attention being called to what is commonly called the Louisiana marshes in the central southern portion of the map here, would or would not this Louisiana marsh have been affected by the storms concerning which you have testified?

A. In an easterly or southeasterly gale, with a heavy sea, I would suppose that the shock would be greater up here on the marsh you refer to as being south of the Rigolets, than it would be on the marsh crossed by the L. & N. road. But whether it would abraid it, or not, would depend of course, a great deal on the character of this marsh,

the extent to which it was bound together with roots, how much clay was in its composition, or whether it was sand.

Q. If the composition of the two earths were similar you would presume that similar results would follow?

A. I would say that in a southeast gale they would get a harder shock from the sea.

Q. Did you have occasion, at the instances you refer to, to examine the character of the soil composing the marsh in the locality of Lake Pontchartrain where you then were?

A. I did not, at that time, because I was about 25 feet up the rigging and the matter floating by seemed to be pretty free of earth. It consisted mostly of tufts of grass, that swamp grass, and small bushes.

Q. Did they appear as though they had been broken off or—

A. They appeared as though they had been wrenched loose and the wash of the water had washed the dirt away from them.

701 Q. From the roots?

A. Yes sir. I should judge so from the way they floated.

Q. Did you notice they had roots?

A. I assumed they had. I did not give that close observation. I was looking chiefly to ascertain the best data I could to get what abrasion was going on.

Q. Did you, afterwards, examine the character of the soil that composed the locality where you were then situated?

A. In 1872 or 1873, somewhere along there, the time when the Government established the lighthouse at Point aux Herbes there was considerable trouble about title, some little trouble about the contracts, and I went out there to the point.

Q. What position did you hold then?

A. I was United States district attorney for the then district of Louisiana.

Q. When you went out to the point did you examine the soil on that occasion?

A. Yes sir; I did, but it struck me to be higher than the average.

Q. What point was that? Was that Point aux Herbes?

A. Yes sir, where the lighthouse is. I remember that my impression was that if the soil was as loose as the title seemed to be around there, that it was pretty near fluid. I had a great deal of trouble with the title.

Q. Was that an alluvial soil mixed with roots?

A. There was a growth of roots. My recollection is there were some quite sizable trees there, that is, shrubs you might call them, 15 or 20 feet high.

Q. Would you be able to make a comparison of the soil which you then saw, with this sample of soil marked sample 1?

A. I would not. Nobody could at pretty near 30 years. It is a geological question that would require careful examination.

702 I know I went there for the double purpose of ascertaining whether it was probable that a lighthouse could be con-

structed there that would be permanent, and several gentlemen claimed the title to the land there, and there were a number of them I know along with me trying to point out their land and some of them had some grants or papers along with them. It gave me a great deal of trouble.

Q. Did you have any other occasion to go through this locality in which you went through storm besides the two you have just mentioned?

A. I think, probably, during 1865 and 1866 I made about four or five trips through there; but only on this one occasion was there any gale, or storm.

Q. You also, though, as I understand, experienced another storm when you came south by the railroad?

A. Yes sir, coming the other way.

Q. But those were the only two when you had occasion, when a storm was in progress?

A. My interest in the second storm was to examine the action of the sea on that marsh from the windward. I had seen it on the lake side from the leeward.

Cross-examination.

By Mr. McCLURG:

Q. Mr. Beckwith, you are not prepared to testify to any specific disintegration of the shores?

A. I could not.

Q. The same influence that you stated, in a general way, would affect the shores of the marshes, uproot the grass and bushes and carry them away, the same forces would strike the Mississippi shore, would they not?

A. The direction would be a little different.

Q. Coming from the southeast, would they, from the southeast, not strike the Mississippi shore?

A. It would strike some of the points substantially in the same direction.

703 Q. About the mouth of Pearl river substantially the same thing?

A. Yes sir. There was evidence that that whole flat, you know, between the Rigolets bridge and English Lookout, was all under water and the water was breaking over there.

Q. But as to any specific effects upon the shores you do not profess to be informed?

A. No sir, I could not be because there might have been tremendous erosion going on and I would not have been able to see it because it was covered by water.

Q. And you never had occasion to examine these shores with a view of determining what erosion was made?

A. No sir.

Q. And the force of your testimony, I understand, is from the point of general observation?

A. Yes sir. I might add that it was more careful than it would have been if I had not had interest in other matters.

Q. But not with any special reference to the erosion of the soil?

A. No sir, the reference was as to how much water was coming across.

ERNEST CUCULLU, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?

A. I am 69 years old.

Q. Where were you born?

704 A. I was born in the city of New Orleans.

Q. Where have you resided the greater portion of your life?

A. In the parish of Saint Bernard.

Q. Did your family reside there and if so, for how long?

A. In the summer we resided on the plantation and in the winter we resided in the city here.

Q. Where did your immediate ancestors reside?

A. In the parish of Saint Bernard.

Q. For how many generations?

A. For four generations.

Q. Where did you reside in 1850 or thereabouts?

A. In the parish of Saint Bernard, always having our home, though, in New Orleans also, our city home.

Q. We are discussing in this suit the question as to the territory south of the Mississippi coast and what appears upon map No. 17 as a sort of peninsular to the southward. Will you please state if you have ever visited that section or any portion of it and when you first saw it, indicating the point on map 17?

A. Well, from my early youth I used to go out hunting along Lake Borgne back of our plantation.

Q. Where was your plantation?

A. The plantation was eight miles below here, below New Orleans.

Q. Now, did you ever visit any portion of this territory south of the Mississippi shore?

A. Yes sir; I have.

Q. At what points?

A. Well, from the mouth of Bayou Bienvenu to Nine Mile bayou.

Q. When did you first visit it?

A. About 1847.

Q. Did you penetrate any way into the interior of this peninsular, if so, how far, about?

A. Which peninsular?

705 Q. This land here lying south of the Mississippi shore, east or west of Nine Mile bayou?

A. No; I never went farther than Nine Mile bayou except through here.

Q. Through where?

A. Through Nine Mile bayou out to the shooting pens, back. Would go out and camp for a week or ten days for duck shooting, and visit all the lagoons in the neighborhood of Nine Mile bayou.

Q. When did you last visit that section, the points you have indicated?

A. The last time was about 1857 or 1858.

Q. Did you, in your last visit, notice any change in the topography of the section you had visited, if so, in a general way what were they?

A. In a general way I have noticed it, in fact, all along that Lake Borgne coast, after each storm. I can cite a case where through a lagoon near Bayou Bienvenu—

Q. That is to the westward of this territory?

A. Yes sir, the west of this territory, where we had a passage out to the lake, that passage was filled up and another one was opened probably a quarter of a mile from that, after a storm took place.

Q. Will you examine this chart or map No. 17, in the neighborhood of where you say you went, and say what difference, if any exists upon that map or the delineation upon that map, and the topography at the time you visited it first in 1846?

A. It would be very difficult for me—

Q. I don't want exactly, but merely a general—

A. I noticed changes in places, right after a storm where there were some washings.

Q. Is that territory as represented on this map, more or less broken up, than when you first saw it, at that particular
706 point you visited in the neighborhood of Nine Mile bayou?

A. I don't know that I could answer that positively.

Q. As far as you could observe from the map, how would the proportion of land and water compare with what you saw when you visited it?

A. It struck me that the proportion there on this map, there was more land when I was there than appears there on this map.

Q. Did you go into Bayou Boudreaux?

A. No sir.

Q. Did you go in False Mouth bay; Nine Mile bayou leads into False Mouth bay?

A. I have been out in the open back here, but I don't know what the name was. I don't know the names of the places.

Q. What do you mean by back here, do you mean south?

A. I mean south, going from Lake Borgne back.

Q. You speak of Lake Borgne, but Lake Borgne terminates in here; do you mean—

A. This body of water here.

By Mr. McCLURG :

Q. Going through Nine Mile bayou south ?

A. Yes sir, going out in the different lagoons back there and shooting ducks.

By Mr. ZACHARIE :

Q. You are speaking of shooting ducks. Did you ever shoot snipe through there ?

A. No sir.

Q. You say you have not visited that territory since when ?

A. Since 1857 or 1858.

Q. Can you remember how wide Nine Mile bayou was when you first visited it, at the mouth ?

A. I should judge about 500 feet, four or five hundred feet.

Q. Did you notice any change when you subsequently visited it in the '50's ?

707 A. No sir.

Q. When you visited it in 1847, how—

A. I did not visit it in 1847. I was on the rear portion of the coast, not Nine Mile bayou.

Q. Well in the '50's ?

A. Yes sir.

Q. How did you get into the interior of Nine Mile bayou ?

A. By pirogues ; we had a pleasure boat ; we started from home from the mouth of Bayou Bienvenu in a pleasure boat and took our pirogues in tow.

Q. How big was the pleasure boat ?

A. It was a sail boat some 30 feet long. And we either took the pirogues in tow or on board, and we would go down and camp at the mouth of Nine Mile bayou.

Q. Can you give about what the depth of water was, for navigation, in Nine Mile bayou ?

A. No sir, I could not ; I know it was deep but I could not—

Q. Do you know how it was in the interior. What character of vessels did you use in the interior, in the ponds ?

A. Pirogues.

Q. What is a pirogues ?

A. It is a light boat made of cypress, you know, a dugout, very light boat.

Q. How much would it draw ?

A. From four to six inches, I suppose.

Q. Was it possible to navigate in this interior as far as you penetrated with a sail boat ?

A. No sir ; not to the hunting grounds, no sir, it was impossible.

708 Q. In these lagoons or ponds, could you have an idea how deep the water was, in floating your decoys ?

A. It was hardly more than two to two and a half feet.

Cross-examination.

By Mr. McCLURG :

Q. Looking upon the face of this map No. 17 and comparing it with your memory of the observations you made in 1847 or '57, you are not able to speak with anything like accuracy about change?

A. No sir, I could not. Changes have taken place I did notice but in accuracy I could not.

Redirect examination.

By Mr. ZACHARIE :

Q. You were quite young when you first visited there?

A. When I first saw it, but I was speaking more in the '50's, but in '47 I was a small boy.

Recross-examination.

By Mr. McCLURG :

Q. You say then that Nine Mile bayou was deep?

A. I am speaking now of Nine Mile bayou the first time I was there in 1853 or 1854.

Q. And it was deep at that time?

A. Yes sir, it was a deep bayou.

Q. You did not go any further east?

A. No sir.

Q. And it was four or five hundred feet wide at that time?

A. Yes sir.

709 Q. You don't know how wide or deep it is now?

A. No sir.

Q. You have no idea what changes have been made in the configuration of this coast line?

A. No sir, I have no idea.

JAMES WILKINSON, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE :

Q. I forgot to ask you whether—when you were on the stand the other day you mentioned about the Shell Beach club house being carried away in the storm of 1893. Can you tell us, if you saw or heard or were present at the blowing away of any substantial building at Pointe à la Hache if so what?

A. It was a very remarkable fact in evidence of the velocity of the storm, that on our courthouse at Pointe à la Hache which had

been recently erected there was a very substantial and strong brick tower through the masonry of which there were large iron bolts about two or two and a half inches in diameter bolting the whole tower together and at the top of this tower was a clock, a very large clock with a very large bronze bell weighing about 500 pounds. Just at the time when the gale was hardest, you, myself, and Mr. Estopinal, were sitting together with our feet against the floor holding the partition of the room that we were in that was being bent, the wooden partition, in by the blow, the wind having already blown out all the glass of the room facing the storm, and the same force of the wind came against the partition. Just as I say. At 710 the height of the blow I heard this bell on this clock, boom out above the roar of the storm, one, one o'clock. Shortly after there was a tremendous crash. None of us at the time, dared to go out and see what the crash was as the air was full of flying slates and other debris, and we found the next morning that this tower, this brick tower had been blown down, the rods had been twisted and broken and the tower had been thrown about 100 feet towards the river from the courthouse, and on the dial of the clock the hands marked five minutes after one, registering the time of its own destruction. The slates from that tower roof I found some of them across the river.

Q. How wide is the river there?

A. 2800 feet and a fraction. A number of other slates from the courthouse roof struck a building of Haspel and Davis. Part of the other slates from that courthouse struck Haspel and Davis's storehouse and stuck into the weather boarding and the roof of that building at right angles and remained there for weeks after. The fury of the wind drove them into the weather boarding in a way that no power, no human power could have driven them in there.

By Mr. McCLURG:

Q. What river was that?

A. The Mississippi river.

By Mr. ZACHARIE:

Q. Let me ask you right there. To what depth were these slates driven into the weather boarding of the storehouse of Haspel and Davis?

711 A. I should judge about a quarter of an inch, enough to imbed them very firmly, the weather boarding itself I don't think was over half an inch in thickness. They might have been through, but I didn't notice. I only noticed the remarkable sight of the building with a number of slates sticking out at right angles to it. At Mr. Onizeme Martin's place below the courthouse, his house was blown down and the rafters of the building were driven through the air some distance beyond the house end wise, with such velocity that one of them passed entirely through a horse and pinned it to the ground, the end of the rafter passed entirely through

it and pinned it to the ground. My own house at West Pointe à la Hache, a very large two story house, was torn all to pieces, the large two inch doors were driven through the wall and blown back in the orchards, two acres, in the track of the storm further to the southward.

Q. Let me ask you one question before you go any further. What was the effect, if any on the doors and windows of the Pointe à la Hache courthouse?

A. They were all blown in. The building was a new brick building. The windows towards the storm were all driven in and the glass blown out of them and the building very seriously damaged; the courthouse had cost some \$23,000.

Q. Built how long before?

A. Not long before that. It was considered to be a strong structure but it was very seriously damaged by that storm.

Q. You can go on?

A. At the Ocean Club hotel that I had built at Grand island, which was a very large building with a tower above the second story, I suppose that tower would seat between 100 and 200 people, it was a sort of observatory on top of the hotel; that tower was blown off and traveled a quarter of a mile before it struck ground.

Q. How far, in a straight line, from the southern edge of the disputed territory in this suit, is Pointe à la Hache where this courthouse was situated, suppose you take it to the courthouse?

A. The map shows it and it is generally considered to be about 22 miles.

Q. What storm have you been speaking of?

A. Of October 1st, 1893, probably the most terrible storm that has ever visited that section within the memory of the oldest inhabitant. There was a storm in 1837. We only know that by tradition. But this particular storm was more terrible and more circumscribed than any storm that had occurred in that country, any equinoctial storm or West Indian hurricane, tornadoes, of very narrow compass.

Q. Have you ever had occasion to trace the path or direction of the October storm of 1893 of which you have just spoken?

A. Yes sir. I was so seriously injured by it, financially, every orange tree I had being blown over and my residence being destroyed and the hotel that I had an interest in being damaged so much, and so many people being made destitute by it, that I traveled around in the injured or wrecked locality and noticed from the path of its ruin the path of that storm. Shall I state the path?

Q. Yes.

A. The storm began, as far as we could discover, southwest of Chenier Caminada in the parish of Jefferson in the State of Louisiana. It then came in from the sea, passed over Chenier Caminada, Grand island, Grand Terre and the country as far east as about Bayou Cypriene below Buras settlement. I noticed on Bayou Cook,

which is 25 miles, on the west bank, below Pointe à la Hache
713 and about five miles southwest from the river, that an enormous log with roots and everything, probably ten feet in diameter, had been swept in there by the high water and washed far up on the prairie probably two miles up in the prairie from the sea, showing the enormous force that the waves had rolled in over the main land with. From what I could see and gather while the fury of the storm at Pointe à la Hache came from the east, northeast, at any rate, why, the fury of the lower circle of the storm at Buras settlement and above Buras settlement, about 25 miles below where I was, was from the southwest, causing a tidal wave and the luggers from the country to the southwest were all driven on the land and some of them were driven across the embankment of the Grand Island road and left there. There was an enormous loss of life, there was a considerable loss of life in the section I was in. A number of houses were blown down. I think there were three people killed in that section, not from the water but from the falling houses. Now, that storm, then, came across, the fury of it, about 20 or 25 miles in width, came up travelling in a northeasterly direction from the southwest, passed up across in the rear of the parish of Saint Bernard.

Q. What do you mean by the rear, north or south—

A. I mean the eastern side of the parish of Saint Bernard, away from the river. The fury of it passed to the east of the courthouse, five or six miles from the river, on up Terre Bœuf ridge, passed over Proctorville and this country to the south, the country in the neighborhood of the southern part of Lake Borgne, and passed then, along the Mississippi sound and destroyed the railroad bridge at Bay Saint Louis in its track, and destroyed a large part of the track.

I don't know the width of the storm there, but if it was any-
714 thing like the width that it was in our section and in the lower part of Saint Bernard, it took in this whole area of country now in dispute.

Q. Did you notice, and if you did please state what you noticed, in regard to the water from the eastward coming up towards the Mississippi river at Pointe à la Hache?

A. The water in the river there in front rose eight feet.

Q. The river itself?

A. Yes sir.

Q. I am speaking of the water—

A. I am going to say. The water in the river rose about eight feet in about three hours. The water in the rear towards the sea rose from dusk until about one or two o'clock until you could row a skiff in the public road just behind the levee in front of the courthouse.

Q. You mean to say the Mississippi River levee?

A. Yes sir; there is a public road there that runs in front of the courthouse and the wind blew the water, in three hours, right straight up over the embankment. The water passed over the rail-

road track in the rear of the courthouse about 100 yards and the fury of the wind blew the cross ties over into the excavations alongside of the track.

Q. In order to bring this water up to the levee of the Mississippi river on the east bank, about what distance would it have to come over the marshes which lie to the eastward of Pointe à la Hache?

A. It would have to come I suppose—you can't say over the marshes, as all of the coast of Louisiana that I have seen
715 and I have been around a great deal of the coast to the sea, is cut up by an interminable lot of bays and lagoons. This is a product of the storms and nowhere in the country along the Louisiana coast are there any other conditions apparent. But it is probably across these bays, 12 or 15 miles, to the sea, but the solid Louisiana prairie would not be from the courthouse, away from these bays and lagoons, more than a mile and a half because these bays and lagoons, about that spot reach within about a mile and a half of the levee.

Q. Did you have occasion to notice, when daylight dawned, after the night you describe, the waters to the rear of Pointe à la Hache where these marsh lands are high?

A. There were waters there, then, but strange to say the course of the wind, after that storm, or with that storm, differed from any other storm I had ever seen. Nearly always these terrific storms blow hard from the east then from the southeast, then from the south, then the wind shifts around to the north, northwest; but that particular storm began in the southeast and backed around to the east north east and north, and then came out from the west with terrific force the next day and blew that water away from the rear country there in a few hours. Well, at daylight there was a whole lot of water in the public road and of course a complete sea of water behind, because the land at the public road or levee in Pointe à la Hache is about five feet above the level of the sea whereas the marsh in the rear is always at sea level, probably not over six or seven inches
716 above sea level. I had a full set of topographical maps of the State of Louisiana from which I made my observations.

Q. When did you go to Pointe à la Hache, just on the eve of this storm or the commencement of it, did you go down there that night?

A. I went to Pointe à la Hache, my family were stopping in the city at that particular time and were away fortunately away from home. I went down to see some prisoners in jail at Pointe à la Hache, and I went down on the east bank and when I got to Pointe à la Hache in the morning about ten or eleven o'clock the river was very rough and my friends there told me they did not think it would be safe to cross, and fortunately I did not cross or I would have been in my house when it was destroyed.

Q. This storm occurred, or commenced on what day and in the evening or morning.

A. The weather had been murky the day previous, but the wind began from the southeast and blew fresh all day, blew hard all day.

Q. What day of the week was it?

A. It was on Sunday morning October 1st, I think it began, and was blowing there before I got there; but it gradually increased. You, Colonel Zacharie, and Mr. Estopinal came down on the night train and got off, if I remember correctly, at Pointe à la Hache about nine o'clock. The wind then was blowing a furious gale and had hauled to the east and the tide was running in.

Q. Do you remember how we got from the railroad to the hotel?

A. No, we had the doors at the hotel, the storm doors on the outside, shut at the particular time, but I know that when you did come into the hotel I found a great deal of trouble in getting the storm doors shut again as the wind was blowing so hard it was with difficulty I pulled the doors to.

Q. Do you remember whether we had to wade or did we come dry shod from the railroad?

A. I think you all were wet through, whether from the rain or the water under foot I don't know. I know when I ran out of the house I was in there was a tree blown against the house I was in.

Q. The hotel?

A. Yes sir. The end of the building started out and came back with a spring, struck against my bed, almost threw me out of the bed, and I didn't stop to dress. I went across and was very nearly blown in the river in my night clothes in getting to the building that you all were in, and the rain struck me then like shot being fired at me with a gun.

Q. In your prior examination the other day, you mentioned about how muskrats contributed to the undermining and cutting up of the grass of these marshes. I want you to explain more fully than you did at that time, as to what effect you have seen muskrats have upon this marsh territory?

A. I take it that the—

Mr. McCLURG: Mississippi reserves an exception on the ground that this witness has testified on all these matters heretofore in this case.

A. I take it that the muskrat is, as to the prairie grass of these marshes, a member of the same family as the beaver, only that, instead of the beaver cutting down trees, the muskrats cut down the grass and leaves on the roots of the grass, they cut down the grass and make nests out of it until there are all over these marshes little hillocks that looks very much like the pictures of the prairie dog mounds that you see in the West.

Q. Where are the entrances to these little mounds?

A. They come from underneath the grass. These muskrats burrough in, eat these grass roots, underneath the surface of the ground, very much like a mole does and nearly always their holes terminate off the shore of a lagoon, bayou or bay.

Q. Now, the entrance——

A. Consequently when these prairies are flooded, even by the tide, a receding tide running through these holes bears some of the deposit and earth and vegetable matter out into the bays and very often, shoals the bays and enlarges the bays.

Q. Are these muskrats herbiforous?

A. Yes sir, they are *hiberforous*, but they do not like any land that has not a great deal of water.

Q. Where are the entrances to these little huts or buildings which they make, below or above the water?

A. They are below the water, so far as I have been able to observe. Of course they are made up of such a mass of tangled grass, it may be that the muskrats burrough through these masses of tangled grass, scratch themselves through. I have seen them in the nests but never saw them go in or come out of the nests.

Q. You have seen them disappear in the water?

A. Yes sir. You see they swim in the canals and bayous along the edges of the banks always; there is rarely a time that you go in the bayous now that you don't see them, there are myriads of them. They are getting so bad, when I went down, since I testified

I have been down to Deer Range plantation where they have
719 abandoned the prairies and have come up and cut down a number of rows of sugar cane, so much so that the manager of the Deer Range plantation has to have a man with traps to catch them and prevent their destruction of the sugar cane itself.

Cross-examination.

By Mr. McCLURG:

Q. Down in this section where so much havoc has been made by storms and muskrats, you spoke of railroads; they still have railroads?

A. Yes sir; the railroads are on solid land however, generally very close to the levee.

Q. Answer me this. I understand the trend of your testimony to be the subsidence of the land and the encroachment of the water. But there is nothing of a serious character in that respect to create anything like a scare to people living in this section?

A. As I told you before, I do not think the subsidence of the lands which are used for cultivation, lands that are close behind the levees and the river, was so great as the lands in the rear where there was nothing but marshes because the lands near the river are not composed of the vegetable matter to such an extent as the lands in the marshes and consequently do not disintegrate and erode, like the lands in the marshes; but it has been a very serious matter with the planters upon the lower coast——

Q. What do you mean by the lower coast?

A. The lower coast, below the city of New Orleans, on the Mississippi below New Orleans, and today I do not think there is a single

successful planter that raises sugar cane there, but has to pump his fields by steam machinery to keep them thoroughly drained.

720 We have now, on the ten plantations operated by my brother, pumping machinery which is capable of discharging over three million gallons of water an hour, in order to keep our fields dry from the seepage water and rain water. We estimate it costs us about \$2.00 an acre to drain these lands from the surface and seepage water.

Q. What do you know about the relative height of that land now as compared with your remotest recollection with reference to its subsidence?

A. All I know is what I saw. The lands, in that section, seem to be about the same relative height above sea level as the lands upon the west side. That is, they are submerged by high tides, or possibly six inches above ordinary tide level, and the flats are bare at very low tides, but as far as the value of that land for cultivation I think it is nil.

Q. I believe, you stated, when you were on the stand the other day that you would not undertake to say what the subsidence was in this immediate territory in dispute except on general comparative theories?

A. That is all.

Q. This storm in 1893 you say travelled from Pointe à la Hache to the northeast across by Proctorville, thence on up along to the Mississippi shore. You have then personal information as to the destruction along the Mississippi shore by that storm?

A. Yes sir, I saw it. I went over to Bay Saint Louis and saw it.

Q. What did you see?

A. I saw the bridge was partly destroyed and torn away.
721 I saw every bath house and wharf along the coast there washed away, but I could not get any further than Bay Saint Louis because the railroad stopped operating there for some days.

Q. About the coast along Pass Christian, in fact, in front of Hancock county, there was great damage done was there not?

A. The bridge being destroyed at Bay Saint Louis, I did not go any further, and the bulk of the settlements at Pass Christian are about two or three miles east of Henderson point and you could not see from where I was the exact damage that had been done at Pass Christian.

Q. What was your observation, from Pearl river to Bay Saint Louis?

A. My observation of that section of the country, I travelled through it on a train going 25 miles an hour and I did not have time to observe anything.

Q. How far is the railroad from Pearl river to Bay Saint Louis from the Gulf coast, from the shore?

A. Along there around by Pearl river to the Rigolets there are several places there where the sea comes in, I should judge, or the

sound comes in, within about from 300 to 600 yards of the railroad ; but at Pearl river, if my recollection is correct the sea trends off there to the southeast, the shore line trends off to the southeast and you are not within a mile of the sound, after you pass a mile east of Lookout.

Q. Well, from your knowledge of the violence of that storm, would you be willing to say that you would not be surprised if you
722 found that it had wrought great havoc along the shore line of the sound as far east as Biloxi ?

A. I was told by Mr. Paquette that it wrought enormous havoc as far as Pascagoula and that the storm was perfectly furious.

Q. In fact it drove some of the schooners out into the streets of Biloxi and of Pascagoula, did it not ?

A. Yes sir, but of that my knowledge is hearsay. If it struck them as hard as it did us, why—

Q. Pointe à la Hache is on the western bank of the Mississippi river ?

A. On the eastern bank of the Mississippi river about 45 miles below New Orleans by river and 35 miles by rail.

Q. How far is it from Pointe à la Hache eastward to where the plantations stop and the waters of the marshes begin ?

A. Well, the cultivable part of the parish of Plaquemines extends more than a mile from the river on the either bank. After that it was one succession of sea marsh and bays and bayous and lagoons out to the sea.

Q. I wish you would please examine this map No. 17 which gives you the eastern shore of Lake Borgne from Malheureux point on down by Proctorville and—what is this point down here ?

A. Proctorville; and Malheureux point is up here.

Q. Tell me now whether there are plantations to the east of that line ?

A. When you asked your last question I understood you referred to the parish of Plaquemines. In Saint Bernard parish which you now speak of, the plantations only extend out about 15 miles and there are no plantations whatever between Proctorville which
723 is Old Shell beach now called Shell beach and Mal-eureux point, as it is all low sea marsh.

Q. And in Saint Bernard parish, east of the line from Malheureux point and Proctorville, there are no plantations ?

A. There are no plantations and in my opinion *my* cultivable land with the exception of one or two shell mounds at Saint Malo.

Q. There is no industrial life to amount to anything, in that section ?

A. Nothing whatever. The only value of that section of the country, is, in its fishier-s, in my opinion.

CHARLES MARSHALL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. I believe that you are the superintendent of the Louisville and Nashville railroad?

A. Yes sir, of the New Orleans and Mobile division.

Q. The particular line that you have referred to runs from the city of New Orleans to Mobile?

A. My division does.

Q. How long have you been connected with the New Orleans and Mobile division of the Louisville and Nashville railroad?

A. Altogether, since January 1st, 1881; as superintendent of the division, since September 1st, 1886.

Q. When was the railroad first carried through to New Orleans?

A. I only know that by hearsay.

724 Q. What date was that, as near as you can get it?

A. It opened for traffic in 1871 is my understanding.

Q. How far west did it come, prior to its being connected with New Orleans. I mean by that, when was the connection made over the marshes lying between that section at Pearl river and the New Orleans end?

A. I do not know.

Q. In other words the purpose of my question was to ascertain whether the railroad had previously extended as far as the high land went, before it was, at a later date connected with New Orleans?

A. I don't know that.

Q. Is this the railroad that you refer to, which, on map No. 17 is indicated by a line running from the left hand or western side of the said map skirting the Mississippi main shore? crossing Bay Saint Louis and thence extending towards the northeast corner of the map?

A. Yes sir.

Q. Have you any knowledge, Mr. Marshall, of any storms which have affected the Louisville and Nashville railroad, since you became connected with it in 1881?

A. A good many.

Q. Were there any storms that affected the railroad between 1871 and 1881, of which you have no personal knowledge, but of which data could be given to us through others connected with your road. In other words—

A. I understand your question. I was thinking if there was any one that could give that information, connected with our service. I have no personal knowledge, but have been informed that the road was washed out a number of times between 1871 and 1881; but the men who told me, some of them are dead and
725 the others I do not know where they are, and I do not know

anybody connected with our service that could testify as to that point. If you wish I can make inquiry and return here again and testify as to that.

Q. Well, just for the present, any information, Mr. Marshall, that you can give us in regard to those who are dead would be perfectly acceptable as coming from yourself?

A. A section foreman, whose name was G. D. Brown, who in those years worked on a construction train, told me of washouts taking place in the old company's time, as we express it, that is, prior to the time that the Louisville and Nashville acquired the road. If he told me the years in which these washouts took place I don't remember them, but in conversation more than once he mentioned the washouts and his work at them.

Q. Is this man Brown now dead?

A. Yes sir.

Q. Is there any one else that you remember who is now dead who made any statement to you in regard to any interference with the traffic of the old road as the result of storms?

A. Yes sir, a man named Philip Caldwell who was a locomotive engineer and subsequently working under me as a conductor told me of his hauling earth to washout places in the old company's time and in this territory.

Q. Is this party also dead?

A. Yes sir.

Mr. McCLURG: I do not understand the witness to mean that the only persons who know of these washouts are dead. I understand that there are other persons living that can testify to that as a fact.

726 A. I said I could make inquiry as to that and come back again and give their names. I can only testify now as to what dead *dead* men told me.

By Mr. DYMOND:

Q. It is purely tradition that has come to you from men that are now dead?

A. Yes sir.

Q. Now, coming to your own period of connection with the Louisville and Nashville railroad, which began in 1881, are you familiar with all or whatsoever vicissitudes the railroad has sustained since then, as a result of storms on this coast?

A. From January 1st 1881 until September 1st 1886 I was freight agent in this city and my business with the road was not in the department that dealt with the maintenance contract and with repairing the road after storms. It has only been since September 1st 1886 that I have had charge of that department of the road; but in February 1881 or 1882 I had a personal knowledge of a very bad storm which interrupted the road between New Orleans and Bay Saint Louis and which washed out the track in the vicinity of

Michaud Louisiana, Chef Menteur, Lake Catharine, Rigolets and Lookout for the matter of three weeks.

Q. That is, kept the track broken, the communication broken?

A. Yes sir, for, about three weeks; it might have been 19 or 22 days. Since September 1st 1886 we have had a good many storms. The dates of them I do not remember, of all of them. I do remember, however, that we had one on the 18th day of August 1886. We had them until 1893 had them nearly every fall. The second day of October 1893 was a very bad one. The last one was the 14th day of August 1901. The dates that I have mentioned are all I

727 can recall now, but there were more of them as I stated.

Q. I presume you are familiar with the character of the soil traversed by your road between New Orleans and the mouth of Pearl river, are you not, upon which the road bed is built?

A. Yes sir, except as to the soil where the road passes through Lee station out here, I don't know about that.

Q. Have you had occasion to visit what is commonly called the Louisiana marshes lying south of Bay Saint Louis and south of Pearl river?

A. Yes sir, very frequently.

Q. Have you ever had occasion to notice the character of the soil formation in the Louisiana marshes?

A. Yes sir.

Q. How does the formation in the Louisiana marshes compare with the soil formation at which the washouts occurred on your railroad about which you have been testifying in constituency, and resistance to storm?

A. We had washouts that have taken place in the marshes. Those occurring in Louisiana have taken place in the marshes. But the washout would be that of the roadbed which was foreign, very largely foreign material hauled there from somewhere else. The base of it, originally, was made from marsh soil and then on top of that was hauled by trains sand from Mississippi, put on top of it. When a washout would take place this roadbed would be washed away from under the track and if at the point of the washout the current was very strong it would dig out a hole six feet deep in the original soil of the marsh underneath the place where the track stood before the washout.

Q. How did the original soil underlying your roadbed, compare with the character of the soil in what is commonly called the

728 Louisiana marshes?

A. Let me understand that question.

Q. What I call the Louisiana marshes is that area of marsh lying between Malheureux point on the west and Isle à Pitre on the east side of a line drawn along that shore line down, in this interior which lies south of that shore line?

A. I am testifying as to this marsh up here.

Q. Have you ever been in this area in dispute in this case, lying

south of the shore line extending from Malheureux point to Isle à Pitre?

A. I have never been in there.

Q. You then have no direct knowledge of the character of the soil of which this marsh is composed?

A. No sir.

Q. Will you now please look at this sample of soil (being shown sample No. 1) and state how it compares with the character of soil found in the marsh along which your roadbed was built?

A. That looks to be the same. That looks to be the same, I don't recognize that vegetation in it, but the soil looks to be the same.

Q. After you leave Pearl river, going westward, does or does not your roadbed cross any soil that would have the character of sample No. 2?

A. Between Pearl river and New Orleans.

Q. Yes?

A. I never saw anything like that. I saw it in Mississippi.

Q. What do you recognize as being similar to this; does that look to you like Mississippi sand?

A. It looks like Mississippi sand.

Q. When you say Mississippi sand do you mean sand from 729 the State of Mississippi?

A. From the State of Mississippi, yes sir.

Q. If the same conditions of soil and the same condition of current and exposure during these storms existed in this area which we call the Louisiana marshes, would you or would you not, from your experience, consider that similar results would have happened as were noted by you in your roadbed which came under your inspection?

Mr. McCLURG: Mississippi reserves an exception to that as being wholly a matter of conjecture.

A. As regards being covered by water?

Q. As regards its erosion and disintegration from the effects of storms?

A. I should say there would be a question of currents. If the current impinged here as there it would be the same effect. It is possible, however, that this may be in the process of formation by deposits from overflow water, I can't say—

Q. Overflow from where?

A. From the sea, bringing sand there and drift and sea weed over it.

Q. Of course you do not personally know that?

A. No sir.

Q. Which one of these several storms, was, in your experience the most destructive to your railroad property?

A. That of October 2nd 1893, so far as bridges were concerned. But it was not so destructive in Louisiana, because a few years be-

fore out roadbed had been raised from East Pearl river all the way to Michaud, it had been raised on a average of about $3\frac{1}{2}$ feet.

730 Q. Michaud is westward of Pearl river and is in Louisiana?

A. Michaud is in Louisiana. Therefore the destruction on account of that big storm of October 2nd 1893, was not so severe in Louisiana as other storms. The storm of February 1881 or 1882 was the most destructive in Louisiana.

Q. Have you any way of telling the velocity attained by the wind during the storm of February 1882?

A. No sir.

Q. Have you any way of telling its velocity by the destructive results produced by the storm?

A. No sir.

Q. Have you any way of telling the velocity of the storm of October 1893?

A. I have not. I knew but I have forgotten.

Q. Have you any way of telling its velocity by the destructive effects produced by the storm of 1893?

A. No sir.

Q. Was or was not your bridge at Bay Saint Louis which lies immediately north of the Louisiana marshes, as shown by map No. 17, was or was not that bridge severely damaged by the storm of 1893?

A. There was about a mile of it washed away, that is, the track and the superstructure and a good many of the piles, about a mile of the bridge with the exception of the draw-bridge, was washed away.

Q. Was that bridge securely built and put together prior to its being washed away?

A. Yes sir. But there was a fault in its construction which cut a figure in the damage to the bridge and it was this. This represents the pile, this represents the cap, the cap projected over
731 the pile and the waves would get a tree, a drift tree, 50 feet long perhaps, and strike this cap, come up this way and strike that cap and knock the pile in to the water. In re-constructing the bridge that cap was made flush with the pile, besides being strapped down with a iron strap that went over the cap and along-side of the pile and bolted through. So, in the second severe storm, which was very nearly as severe, August 14th and 15th, 1901, the waves would throw the drift entirely over the bridge without damage to it, or with slight damage? The bridge was strong in 1893 but it had that fault.

Q. Were the results shown by these storms which you have testified about, indicative of a very severe hurricane?

A. Yes sir.

Q. What, Mr. Marshall, was the general effect produced by these storms concerning which you have testified?

A. The effect was to raise the water; overflow the marshes and low lands, run over the track, the roadbed, and then cut away the

embankment; washed the track out some distance dug away in places of greater or less extent, the roadbed dissolved the sand, spread it over the marsh and leave the original surface of the soil with holes in it where the track had been.

Q. Now as to the bridges?

A. As to the bridges, the water came up until it would impinge against the, in some cases, against the iron spans and displace it; in one place in Mississippi it displaced it so that it fell down and fell in the water and broke up. At Pearl river—that was at West Pascagoula, in one of the storms. At Pearl river it displaced the draw bridge and blew one or two of the spans from the piers to one side perhaps six inches from their positions. The bridge stood there out
732 of place, it could not be used until jacked back into position again after the storm. I have described how, with the trestle at Bay Saint Louis and also Biloxi the damage was done, by the waves driving heavy drift in front of the bridge striking the top of the trestle work and washing it away, also at Bay Saint Louis several vessels were driven bodily through the trestle; of course—they cut their way through, cut the whole thing taking every thing in front of them; I believe that happened in two places at Bay Saint Louis.

Q. From your knowledge of the situation did the storm which thus affected the railroad skirting the southern main shore line of Mississippi, was the direction of the wind such as would carry those same storms over these Louisiana marshes lying immediately south of this shore line concerning which you have just testified?

A. Yes sir.

Q. Are you familiar with the effect produced by the storm of 1902 on the main shore line of Mississippi in the neighborhood of Biloxi?

A. You mean 1901?

Q. It might have been 1901?

A. Not of my personal knowledge. I saw pictures in the newspapers of the damage done at Biloxi and Waveland.

Q. Did you ever ride along the front road in the neighborhood of Biloxi after a storm?

A. No sir. I did at Bay Saint Louis.

Q. What effect was produced on the main Mississippi shore at Bay Saint Louis, as the result of the storm?

A. The banks, or bank was washed in a great many places. At two places it was necessary for the front road to be put back
733 from its original position.

Q. How far back?

A. I should say at one place perhaps fifty feet. Another effect of the storm was to wash away bath houses, I believe there were only one or two left at Bay Saint Louis from that storm.

Q. What was the character—

A. It washed away breakwaters that people had put there to protect their shore; besides blowing down trees and fences.

Q. What is the geological formation of that shore line, do you know?

A. Where the road runs?

Q. Yes. I mean the Mississippi shore line, we will say between Bay Saint Louis and Pearl river concerning which you have just been testifying, and I mean the front shore line exposed to the Gulf or Mississippi sound.

A. On the sound, I could not tell you.

Q. What is it where your road bed runs along?

A. It is, in places, sand, but the road intersects every now and then, marsh land extending back from the front to the rear until you get near Pearl river where you strike a plain, it used to be called, if not now, Grand plain, where the ground is pretty much the same as it is west of Pearl river. That plain, I should say, is two miles in extent from a station called Ansley to the river. Just at Pearl river is a—

Q. You are now speaking of east or west Pearl river?

A. I am speaking of the main Pearl river that is crossed by the draw bridge. Between a bayou and our railroad track is a little high ground, perhaps 200 feet in length where Baldwin lodge is established, but the balance of the plain is about the same character, a little firmer than Louisiana marsh land.

Q. When you noticed this erosion which had occurred at Bay Saint Louis which caused the moving back of the road. I presume you mean by the road, the public road for carriages etc?

734 A. Yes sir.

Q. Did you notice the character of the earth as to whether it was sand or clay or mixed?

A. It was mixed sand and clay.

By Mr. ZACHARIE:

Q. Were you present in these localities along your road during these storms say, that is, at the height of the storm, in February 1881 or 1882?

A. I was in New Orleans.

Q. How soon after the prevalence of the storm did you visit the locality and where did you go?

A. There was a freight train which had left New Orleans and got off the track in consequence of the storm, getting in a washout place. It had freight on it, it was a train of freight. There were some live stick on the train also. That train remained there for some days.

Q. Where do you speak of, what locality?

A. Somewhere in the vicinity of Chef Menteur. How long after that I don't remember but I went down there for the purpose of seeing after the freight. I did not go all the way to the train. I came back, I believe, because we let the men that were working out there come back with what they could get. I was working in the vicinity of Michaud, I did not go to Chef Menteur.

Q. Were you able, at that time, from the effects of which you observed, to judge from what direction the storm came?

A. From my own observation?

Q. Yes?

A. No sir.

Q. Now, in regard to the storm of 1893, were you present in this particular locality at any time during the prevalence of that storm?

A. In that particular locality?

735 Q. Yes.

A. No, sir, I was at the Mobile end. I was in the storm there.

Q. How soon after the storm did you visit this particular locality where the damage was done?

A. About 18 days.

Q. Were you able to judge, from what you saw, as to the direction from which this storm came which inflicted this damage from what point of the compass?

A. Let me understand about that. I know which way the wind blew from; but I cannot say that I can tell that from the indications I saw.

Q. Well, state what direction the wind came from and how you know it?

A. The wind blew first from the southeast; that was the storm of 1893, and then from the northwest.

Q. How did you get that information?

A. I was in the storm.

Q. Where were you in the storm?

A. When it was at its maximum, it began in the night, I was in Mobile, I left there early in the morning, I don't remember the hour but when the storm reached its maximum I was at a place called Venetia, Alabama, about nine miles south of Mobile.

Q. How soon afterwards did you visit this particular point?

A. About 18 days.

Q. And you judged the course of the storm from what you observed at the points where you were?

A. Yes sir.

736 Q. Now, in regard to the storm of 1901, were you in this particular locality or where were you at the time of this storm?

A. I was at Bay Saint Louis when it began, and attempted to come to New Orleans. I was in it between Lake Shore station and Ansley station, for several hours.

Q. Was that in Mississippi?

A. Yes sir.

Q. How far west of Bay Saint Louis were those points which you just mentioned?

A. About ten miles to where I was.

Q. Did you observe from what direction the wind came, in that storm?

A. A little east of north.

Q. Did it continue to blow from that direction?

A. Yes sir, until just before it ended and then it whipped around to the other direction for a little while.

Q. What do you call the other direction?

A. From the west, perhaps south of west.

Q. Can you describe what you saw in regard, if you observed anything, in regard to the waves and water as to flooding territory, or other factors, which showed the violence of the storm?

A. This last storm?

Q. Yes.

A. I was on the coast train. There were a great many passengers on the train. It was my belief that we could get through to New Orleans. We left Bay Saint Louis to make the attempt. I was on the platform, the rear platform of the train. When
737 we got out of the woods, south of Waveland or west of Waveland—

Q. State how far Waveland is from Bay Saint Louis?

A. About four miles, but this place was about half or three quarters of a mile west of Waveland where there was an opening extending to the sound, a low marsh and without trees. The train was exposed to the violence of the wind and then I realized how strong the storm was and that it was increasing. The water from the sound was beating up against the roadbed.

Q. What was the condition of the marsh which you have just spoken of?

A. It was covered with water.

Q. Have you any idea of the depth of the water that was over it?

A. It was several feet deep.

Q. Was that water quiescent or was it in the form of waves?

A. It was in the form of waves.

Q. Could you—

A. And dashing up against the road.

Q. Could you form an idea of the depth of the water and the height of the waves?

A. I formed my idea of the depth of the water from a general knowledge of the height of the roadbed.

Q. Can you state about how high that was?

A. I should say several feet, three feet maybe.

Q. How about the waves, any waves at all?

A. Yes sir.

Q. What did they seem to be in height?

A. I formed no estimate of that; but a spray was dashing up in the air particularly against the road. We proceeded until the train got down about Ansley station.

Q. How far did you say that was from Bay Saint Louis?

738 A. That is about ten miles, perhaps eleven. There, the engineer came to a stop because the waves were dashing over the track itself and he knew he could not pass it. The storm had

increased in violence and the conductor and myself had a conference, we saw then we couldn't get through, as to what we should do. The first thing to be done was to get out of that wind. We were afraid for the safety of the train. So we backed up until we found a skirt of woods where the trees were low, the tall trees were out of our reach. We staid there sheltered from the wind, the train stopped. Knowing that the storm had increased in violence and not wanting to be cut off from the world and something to eat, I directed the trainmen to send a flagman in the rear to see if there was any damage to the track and to keep any other train off of us that might be coming in our direction and gave him time to go a mile and instructed him to keep on going to Bay Saint Louis or until he got a train. And then we backed up and when we crossed those places I mentioned the water was breaking over the track——

Q. You mean that marshy place?

A. Yes sir, I should say there were several of those places. This was the largest one. We got back to Bay Saint Louis safely. And that place afterwards washed out.

Q. The place which you crossed?

A. Yes sir.

Q. In returning to Bay Saint Louis?

A. Yes sir.

739 Q. During the progress of this train and its return to Bay Saint Louis, from what direction was the wind, at that time, of the storm?

A. A little north of east.

Q. Did, where you were, seem to be, from your observations, at that time or afterwards, the center of that storm, or was it the edge of that storm?

A. It must have been the edge of the storm, as it continued so long it continued from that time about 24 hours although I read in the papers, I think I did, that the Signal Service people stated it was two storms one occurring before the other had scarcely gotten out of its way.

Q. Were you present in this locality or about there, at the time when you say it shifted around to the northwest?

A. I was at Bay Saint Louis.

Q. Did you have any opportunity of observing, and if you did, what was the violence of the storm when it shifted to the northwest?

A. I was in it and watched it. I was engaged in filling sacks with sand, piling them around the bulkhead of the bridge. There was a schooner with some people on it driven into the bridge.

Q. Read the question? (Question read.) I will add to that. As compared with the storm from the east or southeast?

A. The north west wind?

Q. Yes?

A. It was not near so strong.

Q. Now what is the effect, if any, of these winds from the east and southeast, in filling up the Mississippi sound and Lake Borgne and Lake Pontchartrain, so far as you observed.

740 Does it diminish the water or does it increase the water?

A. The east wind and the northeast wind drives the water into Lake Borgne as a pocket. It goes then into Lake Pontchartrain it reaches Lake Pontchartrain through the Rigolets, unknown pass, Little Rigolets, Chef Menteur, and even Pearl river, backs the water up.

Q. How about the western end of Mississippi sound. Does it have any effect, if so, what, in regard to the filling up of the sound with an unusual amount of water?

A. Yessir, it fills that up with an unusual amount of water. And the southeast wind also, as to filling up Mississippi sound.

Q. Now, what is the effect when the wind shifts around to the northwest on those accumulated waters in the sound?

A. It drives them out very rapidly.

Q. Is it more difficult or is it easier for those waters to escape then, these accumulated waters, than the ordinary waters in ordinary times when there is no storm?

A. Does your question mean, does the northwest wind facilitate the running of the water out?

Q. No. I mean to say as compared with the ordinary amount of water, what is the effect as to the easiness or difficulty in discharging those waters from, these accumulated waters from these sounds, lakes, etc. Is it easier for that discharge or is it more difficult for them to discharge? You have testified that it filled up these sounds?

741 A. Yes sir. As soon as the wind which has banked up the water ceases, the water begins to run out very rapidly, particularly when the tide begins to go out; but when the wind changes and blows in the direction of the running water the current is very violent and it rushes out.

Q. Is it, or is it not a fact that these waters are balled up as it were and more difficult to discharge on account of the accumulation of this extraordinary amount of water?

A. It takes some time for it to run out.

Q. Does it discharge with the facility that it would with ordinary tides in calm weather?

A. That is difficult to answer. It runs out very swiftly and falls rapidly. At the ordinary stage of water it is running both ways according to the tide.

Q. How long, or about how long do these storms which you have described, last?

A. From the incipency to the height is usually about 48 hours; then they continue about 12 hours. They are over very quickly, when the wind shifts.

Q. Have you ever noticed any subsidence of these marsh lands in

southeastern Louisiana, any evidence of it, that is, the sinking of the land?

A. No; except where the sinking has been caused by the weight of our track and roadbed.

Q. Geologists state that there is about a four foot subsidence in a century; have you ever seen any evidence to justify that theory?

A. I have not. I believe the contrary—oh, a moment, please, what I believe is, that there is an accretion to the surface of the marsh.

742 Q. By what means?

A. By the rotting of vegetation, deposit of sand and drift from these overflows. If there is any general subsidence discovered by the geologist I don't know anything about it. I have not observed any.

By Mr. DYMOND:

Q. Is, or is not, the question of the damage suffered by your road, or its New Orleans division, as to expense, a matter of serious consideration by the management of the road, so far as these storms are concerned?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. You have been questioned, Mr. Marshall, a great deal about the direction and effect of storms, and of the different kinds and stratas of earth. I am not mistaken, am I, in believing that you have not undertaken to testify about these matters scientifically or as an expert, but rather from your observation that was given during the time you had business along the shore with your railroad?

A. Yes sir.

Q. And I understand you to state, in your direct examination, that you are of the belief that these marsh lands over which your road runs are increasing in height rather than subsiding?

A. Yes sir. I stated that I did not know anything about the general or geological theory of subsidence; that my personal belief was that by accretion the ground was getting firmer.

Q. And that belief is based on your observation during the last 20 years, of that section?

743 A. Yes sir, 18 years.

Q. And that applies to the marsh land east and west of Pearl river?

A. West of Pearl river.

Q. You think those marshes are firmer there than they were in 1886?

A. I think so.

Q. Has there been any displacement of trestling on your road

along that portion of it about which you have been interrogated, by fills, hauling in of dirt, since your knowledge of it?

A. Not within my time.

Q. Do you not know, from the history of the road and its traditions, that a great deal of it that is now on ground was originally built on piling?

A. On trestle work, yes sir.

Q. And I have referred, of course, to that portion in the neighborhood of the Rigolets and on eastward to the Pearl river?

A. There is an embankment through Lake Catherine just between the Rigolets and Chef Menteur where, I have been told, the lake was crossed by a trestle work once. A time or two when there was a washout I have observed the remains, under the ground, of work showing that once there was a culvert there or a short bridge there in the vicinity of Lake Catherine and Chef Menteur.

Q. How far would you say these marsh lands extend east of Pearl river along the line of your road, excepting those high portions that you spoke of in your direct examination?

A. Do you mean towards Lake Borgne or towards Bay Saint Louis?

744 Q. I mean eastward from Pearl river along the line of your road towards Biloxi?

A. Eastward you mean along the line of our road?

Q. Yes?

A. About two miles.

Q. How is it then, at the end of that two miles, on eastward the soil, what is the character of the soil eastward from the end of that two miles?

A. Sandy, with the exception of the intervention of these marshy places extending back from Lake Borgne to the interior; there are several of them.

Q. This prairie stretch that you spoke of is in the neighborhood of Waveland, is it not?

A. In the neighborhood of Waveland is a marsh extending back from Lake Borgne to the interior, called Jackson's marsh; but I spoke of a prairie that is called Grand Plains, that is in the neighborhood of Pearl river, it lies, it begins at Pearl river and extends back to, about two miles to a place called Ansley.

Q. Is it not true that the character of the soil along your road way, at about Ansley or Bay Saint Louis, is generally of a sandy nature?

A. Yes sir.

Q. Then, east of Bay Saint Louis on to Biloxi, what is the general character of the soil?

A. Sandy.

Q. And is that not the character of the soil along the Gulf coast from say the south of Pearl river around to Biloxi?

A. Yes sir, sandy.

745 Q. Same character of soil?

A. Yes sir.

Q. Susceptible—

A. Well, there is a little more loam in it in the vicinity of Pass Christian than at Biloxi.

Q. Easily susceptible to the action of the waves, especially in times of storms?

A. Yes sir.

Q. These storms of 1893 and 1901 which you spoke of as having done damage to your road, came from the seaward?

A. From the seaward, yes sir.

Q. And the water that damaged your track and drove the vessels through your trestle work, was Mississippi Sound and Gulf of Mexico water?

A. Mississippi Sound, Gulf and Lake Borgne water.

Q. Driven in by the wind from that direction?

A. Yes sir. To be exactly accurate some of the damage was done by the return water when the wind shifted around.

Q. But the greater damage was done as it went out of the sound across your track?

A. Yes sir.

Q. You have no personal knowledge, as I understand it, of the physical changes in the coast from Malheureux point down here along these Louisiana marshes at Isle à Pitre?

A. No sir.

Q. And no specific information as to the damage done to the Mississippi shore except in this instance that you have spoken of where they moved the public road back?

746 A. No sir, I have not, except at Bay Saint Louis.

Q. Do you know what the effect of the storm of 1893 was upon the shipping interests at Biloxi?

A. Only what I saw in the papers. I read in the papers about the damage to vessels at Ship island.

Q. Did you read in the papers about some schooners being driven up in the streets of Biloxi?

A. I read a good deal of the damage to vessels there and about the damage to vessels that belonged in Pearl river, told by the vessels' owners.

Q. Have you any knowledge as to whether the lighthouse at Biloxi was washed down by that storm?

A. No. I saw a schooner on the roadbed at a point between Scranton and Pascagoula. I saw another one sunk.

Q. How far from the waters of the sound, after the storm was over and the waters had resumed their normal condition?

A. There are bayous that come right up to the place, bayous through the marsh.

Q. Where the schooner was?

A. Yes sir. But the main body of the water was about $\frac{1}{2}$ of a mile away. I saw a bark or brig up in that marsh, half a mile from

the sea, standing up in the marsh. Our track was washed away four miles at this place.

Q. At what place.

A. Between West Pascagoula and Scranton, portions of it, sections of it. We had to replace the track back entirely.

Q. Tell me, if you —, the distance from Pearl river, by your railroad, to West Pascagoula?

747 A. I can give it to you very close, 60 miles.

Q. And your road runs pretty well along the shore all the way, the Mississippi shore?

A. Except for the woods the water would be in sight at nearly every point from Pearl river to Ocean springs until you get to West Pascagoula the shore line comes out some distance, perhaps eight or ten miles.

Q. What would you estimate the water line from the mouth of Pearl river to Pascagoula, to be, at mean tide, the distance?

A. From the mouth of Pearl river to the mouth of West Pascagoula river?

Q. Yes sir.

A. The distance on a straight line or approximately straight line, is 60 miles and I should judge following the coast line it would be from 70 to 75 miles.

Q. How far is it from West Pascagoula to East Pascagoula?

A. Three miles.

Q. And I believe the State line is about ten miles further east, the State line between Mississippi and Alabama is ten miles east of Pascagoula?

A. East of Scranton or east of Pascagoula.

Q. I will ask you to give us the distance between the eastern branch of Pearl river, westward to the Rigolets, the Big Rigolets?

A. Five miles.

Q. What is the width of Pearl river, if you know, where your road crosses?

A. About 300 feet.

Q. And how is it across Big Rigolets?

A. About half a mile.

Q. And at Little Rigolets?

748 A. About 200 feet.

Q. Where have you draw bridges?

A. At Pearl river and the Rigolets, that is, in this State, in Louisiana.

Q. Have you any information about what old forts there are in that neighborhood of the Rigolets?

A. I have been informed that there is one called Fort Pike that lies north of the Rigolets, in Lake Pontchartrain. Then there is an old fort called Fort Macomb on the west shore of Chef Menteur, an abandoned fort.

Q. How wide is Chef Menteur where your road crosses?

A. About 600 feet.

Q. Have you a drawbridge there?

A. No sir.

Redirec: examination.

By Mr. DYMOND:

Q. When you spoke of the accretion, did you, or did you not refer to that section lying west of Pearl river on the route of your road to New Orleans?

A. I did.

Q. What accretion do you refer to as having any influence upon the surface of the land in that locality?

A. The growth of vegetation and its decay yearly, and occasional storms spreading sand and driftwood over the land.

Q. There is no alluvial deposit from the Mississippi river that has taken place there?

A. No sir.

At this stage of the proceedings the hearing was adjourned by the commissioner, to Monday April 25th 1904, to be resumed at the same place and at the hour of 10.30 a. m.

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Resumption of Proceedings.

NEW ORLEANS, April 25th, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m. All parties present.

Present: Hon. Frank H. Mortimer, commissioner.

Hon. Walter Guion, attorney general of the State of Louisiana.

Me: John Dymond Jr., F. C. Zacharie, and Albert Estep Jr., associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

A. C. DUVAL, witness re-called on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this paper which we call Document No. 11, and state if you recognize to have seen before the blue prints which are marked sketches Nos. 1, 2 and 3?

A. Yes sir; I have seen them before and traced them.

Q. Will you look at this map which is marked No. 7 and state whether the black ink dotted line extending through Lakes Maurepas, and Pontchartrain and the Rigolets into Lake Borgne; and the

black dotted line extending from the mouth of Pearl river through Mississippi sound through the pass southwest of Cat island and north of Isle à Pitre into Lake Borgne; the dotted blue ink lines marked Nine nautical miles from Isle à Pitre and nine statute miles; nine nautical miles from Grand pass and nine statute miles; nine nautical miles from present main body of marsh land and nine statute miles; and the red ink dotted lines marked 18 statute miles and 18 nautical miles from the coast of Mississippi, were projected on this map No. 7 from the data furnished by Document No. 11?

A. Yes sir; they are reproductions of these blue prints in other words.

Q. Are they, or are they not, the lines of the Hodgkins report projected by you on map No. 7?

A. They are.

Q. Will you please now look at this map which is called No. 6 and note the dotted black ink line extending from the mouth of Pearl river eastwardly through Mississippi sound by the pass southwest of Cat island and northeast of Isle à Pitre into the gulf of Mexico, and the blue ink line marked A-A and the blue dotted ink line marked A'-A' and the blue ink line marked B-B and the blue dotted ink line marked B'-B' and state where you got the data by which you projected these lines?

A. I projected these lines by taking these lines on these blue prints and applying the scale of this map.

Q. When you speak of these blue prints do you refer to the sketches No. 1, 2 and 3?

A. Of the Hodgkins—

Q. Of the Hodgkins report marked Document No. 11?

A. Yes sir.

Q. Are those lines projected correctly in accordance with the scale of map No. 6, in proportion to the scale on the sketches made by Mr. Hodgkins?

751 A. They are to my best ability.

Cross-examination.

By Mr. McCLURG:

Q. So then it follows, Mr. Duval, that any inaccuracies on the blue prints marked No. 11, would be carried into the marking on maps 6 and 7, by you?

A. No sir, because before doing that I have checked the lines to see that what they indicate is correct.

Q. Checked them by what?

A. By the scale.

Q. I understand, but I understood you to say that you took as a basis for those markings, the Hodgkins report, map No. 11?

A. Yes sir, I did; but before doing that, every line on these blue prints was checked by me.

Q. On the Hodgkins report?

A. Yes sir. I didn't have the report but I had these lines and what they claimed to be I checked to see that they were really so.

Q. Checked them by what?

A. By the scale.

Q. What did you take the scale from?

A. From the maps, 1 / 80,000 scale and——

Q. Scales from maps 6 and 7?

A. Yes sir.

By Mr. DYMOND:

Q. Please look at map No. 7 and state what scale is on that map?

A. 1 / 400,000.

By Mr. McCLURG:

Q. Do I understand you to say that you verified the markings on map 11 by the scale which you found on map No. 7?

A. I don't exactly understand——

752 Q. This is No. 11; did you verify these markings by any scale from map 11?

A. Yes sir.

Q. What scale?

A. The scale is written on each map. They are reproductions of those maps, the blue prints are reproductions of those maps.

Q. Now, I will ask you to go back with me to my original question. If there are any inaccuracies on map No. 11, the blue prints, they necessarily follow into these markings that you have made indicating the lines out of Lake Pontchartrain, Lake Borgne, and the mouth of Pearl river about which you have just been interrogated by Mr. Dymond. In other words, if the blue print is incorrect these markings that you have carried to maps 6 and 7 are incorrect, are they not?

A. Well, they are to a certain extent, if I made the same mistake in going through, making those measurements, as Mr. Hodgkins has made, then it might be incorrect in that way.

Q. Please look at Document No. 11, sketch 3, and follow the line drawn from the mouth of Pearl river marked Grand Island pass and South pass and channel, and tell me what that map shows that this line indicates?

A. Showing deep water sailing line from Pearl river to the gulf of Mexico.

Q. And that is the line reproduced, marked C-C, on map No. 6?

A. Yes sir.

Q. And it is intended to indicate the same on No. 6 as it is on Document 11, the deep water sailing channel?

A. Yes sir.

Q. And the same line is delineated in red on Exhibit E?

A. I don't know anything about that map.

Q. I want to call your attention to map No. 7 where you
753 have made some measurements taken from sketch No. 2,
Document No. 11. The line which is marked nine nautical
miles from Isle à Pitre, strikes the main shore of Mississippi east of
Bay Saint Louis, on map No. 7, does it not?

A. It does.

Q. Now, look at the next line to that marked nine statute miles;
how far is it from that line to the Mississippi shore at the point where
the nine nautical miles strike the Mississippi shore?

A. I would have to measure that.

Q. What is the distance between those two lines at that point?

A. I am doing that of course, it is a rough way, but I have not
got the instrument to give my answer accurately. Well, about 1½
nautical miles from the coast of Mississippi.

Q. Now, I call your attention to the line which you have indicated
on map No. 7, as nine nautical miles from Grand pass. How
far is that from the Mississippi shore west of Bay Saint Louis where
the railroad crosses into the said bay, from the Mississippi shore?

A. Two nautical miles.

Q. And the nine statute miles would be about the same distance?

A. It would be the difference between nautical and statute miles.

Q. I wish to ask you about the lines which you have indicated on
map No. 7, marked nine nautical miles from present main body of
marsh land. That strikes the Mississippi shore at the same point?

A. It does not strike it at the same point. It strikes it pro-
754 portionately between the nine nautical miles and the nine
statute miles to the west.

Q. So, then, it is not true then that the nine nautical miles meas-
urement from the present main body of marsh land and the nine
statute miles measurement from the same point and the nine nau-
tical mile- measurement from Isle à Pitre, would deprive Mississippi
of any of the frontage to the westward of either of those lines?

A. The line nine nautical miles from Isle à Pitre, does not strike
the coast

Q. How much does it lack of it?

A. I have not the instrument—it is very small; at the end of that
line which is nearest to the coast it would be about a quarter of a
nautical mile from the coast and the end of it is the nearest point to
the coast.

Q. So that measurement would leave about a quarter of a nau-
tical mile between the Louisiana line, according to that indication,
and the Mississippi shore?

A. Yes sir.

Q. Come back, please and make another measurement for me.
How far is it from Gulfport to that nine nautical miles from Isle à
Pitre, indicated on this map No. 7?

A. The distance, in regard to what?

Q. What is the distance from Gulfport to that line at its nearest
point, to Gulfport?

A. I give this measurement as close as I can get it, of course I have not got the instruments, I am doing this as near as I can get to it. $3\frac{1}{2}$ nautical miles.

Q. What direction did you measure?

A. I measured it in a line perpendicular to the coast.

Q. I want you to please take another measurement directly north to Gulfport and tell me that distance, in nautical mile measurement?

A. $2\frac{1}{2}$ nautical miles.

Q. Let me ask you to state if you see indicated on map No. 7 a channel out of Gulfport, seaward, towards Ship island?

755 A. Yes sir.

Q. Is it not true that this nine nautical mile measurement from Isle à Pitre, intersects that channel between Gulfport and Ship island?

A. No sir; it does not intersect the channel; it comes near it but it does not intersect it.

Q. How far is it from that channel at its nearest point?

A. I put it a little less than a quarter of a nautical mile. You see the lines are made rather thickly to be able to see them, to reproduce them to the eye and it is the center of that line which really would be, so I can't really give you the exact distance of that and I would call it a quarter of a nautical mile.

Q. Now, tell me, as near as you may be able to do so, the distance between this nine nautical mile line from Isle à Pitre to the west end of Ship island?

A. One nautical mile.

Q. How far is it from this nine nautical mile line from Isle à Pitre to the nearest point on the Mississippi coast at Mississippi City? I want the distance from Mississippi City to this line by the nearest marking, nearest direction?

A. I cannot determine where Mississippi City is. I cannot determine the position of Mississippi City.

Q. As the author of those markings on map No. 7, do they not indicate that if either of those lines, traced in blue, should be established as a boundary between Louisiana and Mississippi it would shut off the water frontage of the State of Mississippi east of the channel from Gulfport to Ship island, save a little passage that you spoke of at the northwestern end of the line marked nine nautical miles from Isle à Pitre, and is it not completely closed up west of Bay Saint Louis at the northwest of Point Clear?

756 A. The line indicating nine nautical miles from Isle à Pitre would leave a small passage, of course I don't know the depth of water there, a quarter of a mile, of a nautical mile, southeast of the Gulfport channel and another passage between the coast, the same one that I mentioned before. Now, the nine nautical miles from present body of marsh land would close the frontage from the northeast of Point Clear. This one does not close your

frontage at all in any way. Now, nine nautical miles from Grand pass does not close it in any way.

Q. Would it, if it was extended?

A. You would have to follow the coast, and to follow that coast wherever it went.

Q. How much would an extension of that line leave the Mississippi front in the neighborhood of Point Clear. I mean nine nautical miles from Grand pass, or nine statute miles from Grand pass?

A. Around Point Clear it would only leave a channel of about—

Q. Do you mean a channel?

A. Well, a passage of half a nautical miles, about.

Q. Have you any idea how deep the water is at the passage last mentioned by you and the passage between the nine nautical miles from Isle à Pitre and the shore?

A. I will have to use another map for that. That passage on the southeast of Point Clear would vary from 12 to 7 feet in the biggest depth and of course when you come to the coast it goes to nothing. The passage between the nine nautical miles from Isle à Pitre line and the coast of Mississippi would practically give you no water passage at all.

Q. I will ask you to examine the combination map by the combination of the charts 190, 191 and 192, and say whether you made the delineation—on this map which appear to be the same as those on map No. 7?

757 A. Yes sir.

Q. And the measurements about which we have been making inquiry on map No. 7, would be the same on this combination map marked No. 6?

A. They would be practically the same.

Q. Now, is it not true that these markings which indicate measurements taken by you from the northeast of Isle à Pitre, Grand pass and the main land of the marshes, do not put the deep water channel entirely within the State of Louisiana, all to the east of lower Point Clear?

A. If I understand the question, I will answer as I understand it.

Q. Yes?

A. The deep water channel is to the southwest of the lines indicated on the map No. 6, as lines A-A, A'-A', B-B, and B'-B', and would be to the northeast of the line you asked me, a line that is not on this map, that would make a conflict would it not, this line is not reproduced on this map.

Q. The last line is not reproduced on map No 6?

A. No sir.

Q. Then if either of these lines A-A, A'-A', B-B, B'-B', should be established as the boundary between those two States, the entire deep water channel from the lower side of Point Clear, eastward, to

near the west of Ship island and southward of that, would be exclusively within the State of Louisiana, would it not?

A. Yes sir.

Q. And would run very close to Ship island out of Gulfport, if A-A should be established as a boundary line, would it not?

A. My last answer would answer that. The question of what distance there is between the channel and that A-A line on the other map answers this that you have asked about. I have measured it.

Q. And what water would you have between that line and the Ship Island channel, Gulfport and Ship Island channel?

A. What water, what depth?

Q. Yes.

A. Well, that channel is excavated to 24 feet in depth.

Q. I said between the line and the channel. I did not ask you the depth of the channel, but what depth of water between the line A-A and the channel. What does the map indicate?

A. I want to go through the soundings, I have not looked at the map, I want to find out whether those things are in it or what. It would be water of $3\frac{1}{2}$ to $3\frac{3}{4}$ fathoms.

Q. To the southwest of the Gulfport channel?

A. And to the southwest of the Gulfport channel, in feet, from 8 to 14 or 17 feet of water.

Q. Look at Exhibit E where the deep water channel line is marked in red and lettered in red letters which read Boundary line between the State of Mississippi and the State of Louisiana, on to the point southwest of the west end of Ship island, and say whether the measurements about which we have been making inquiry, would not be the same on this Exhibit E as you have indicated them to be on maps Nos. 6 and 7 at which we have just been looking?

A. Yes sir; on any map they would be the same.

Redirect examination.

By Mr. DYMOND:

Q. You have been asked by counsel for Mississippi, whether, if there should be any errors or inaccuracies in the Hodgkins sketches 1, 2 and 3 accompanying Document No. 11, you would have reproduced them on your projections on maps 6 and 7. Are you able to tell what map or chart Mr. Hodgkins used as a basis for making these sketches 1, 2 and 3, accompanying his report as Document No. 11?

A. Document 11, sketch 1, is the reproduction of the Coast and Geodetic chart No. 19; scale 1/400,000.

Q. Will you please now look at map No. 7 and state whether or not it is a copy of chart No. 19 of the United States Coast and Geodetic Survey?

A. It is.

Q. Is it, or not, the same chart that Mr. Hodgkins used in making his blue print tracing?

A. It is.

Q. Will you please now look at sketch No. 2 and state what basis Mr. Hodgkins used in making that drawing?

A. Sketch No. 2 is also chart No. 19, scale, 1/400,000.

Q. Is that the same as this map No. 7?

A. Yes sir, it is.

Q. Will you please now look at sketch No. 3 and state what basis Mr. Hodgkins used in making that drawing?

A. United States Coast and Geodetic Survey charts 190, 191, scale 1/80,000.

Q. Now, look at map No. 6 and state whether you find United States Coast and Geodetic Survey charts 190 and 191 as forming part of that map?

A. Yes sir.

Q. Will you please now look at map marked Exhibit E, and state whether you also find charts 190 and 191 as forming part of that exhibit?

A. 190 and 191 form part of that exhibit.

Q. Did you, Mr. Duval, check the work of Mr. Hodgkins as shown on the blueprints to see whether or not it corresponded with the scale of chart 19 so far as sketches 1 and 2 were concerned and with the scale of charts 190 and 191 so far as sketch No. 3 was concerned?

760 A. I did.

Q. What was the result of your comparison. Were the lines projected—

Mr. McCLURG: Would it not be better to ask him what he did to test the correctness of those maps. You are leading him.

Mr. DYMOND: Just make your objection.

Mr. McCLURG: I am doing that now.

Mr. DYMOND: Have you finished?

Mr. McCLURG: Yes.

Q. —by Mr. Hodgkins found to be or not to be in accordance with the scale of chart 19, marked map No. 7, and charts 190 and 191, marked map No. 6?

A. They were scaled correctly.

Q. Now, what errors or inaccuracies could there be as based upon charts 19, 190 and 191, if any, in either your work or the work of Mr. Hodgkins?

A. The only error—that may occur, and that would not be an error from an engineering standpoint, would be the different handling of maps, a map will, by being handled a great deal or blue print, will shrink, but the shrinkage is uniform and when there is a scale on the map the scale shrinks with the paper, the inaccuracy cannot be very large. In other words it is practically no inaccuracy. That is the only thing I ever heard yet on maps

that could be called inaccuracy, because the making of the maps, they are perfectly correct.

761 WILLIAM BEER recalled on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this atlas being Cary's General Atlas, published by M. Cary at Philadelphia 1814, and compare this photo print, which we will for the purpose of identification mark No. 48, and state whether or not it is a correct photo print of the map before you?

A. I have compared it and find it a correct photo print.

Q. Have you compared the coloring upon the photo print with the coloring upon the original map and if so, what is the result of that comparison?

A. The coloring is correct. It is a little thicker on the copy than on the original, but the outlines are correct.

Q. By whom was this map made, Mr. Beer?

A. Only the name of the publisher is shown, Cary.

Q. Will you please look at this map which, for the purpose of identification will be called map No. 49, and state by whom it was made?

A. It was made by W. H. Wilder, civil and topographical engineer.

Q. Do you know who Mr. W. H. Wilder was?

A. No sir.

Q. Will you please look at this photo print and make a comparison of it with the original map which is now before you?

A. I have previously compared it and find it correct, photographically.

Q. Does this map of Mr. W. H. Wilder give any date as to its publication or does it in any way indicate upon its face when it was published?

A. I find no indication of date.

762 Mr. DYMOND: The commissioner is requested to mark the photo print concerning which the witness has just been testifying, map No. 49.

Cross-examination.

By Mr. McCLURG:

Q. Look at the photo copy of map 48 and say whether it shows by whom this Philadelphia atlas was made?

A. It does not state on the face of the map by whom it was made.

Q. Is a date given on the face of the photo print?

A. The date is not given.

Q. But it is on the original?

A. No; this is a faithful photographic blue print.

Q. Is it given on the face of the original map, the date?

A. It is not.

Q. Nor the name?

A. Nor the name of the maker.

Q. Whom did you say made it?

A. I said it was published by Cary. I have reason to believe it was made by Samuel Lewis.

Q. Map No. 48 indicates by the coloring of all of the islands east of Pearl river including Cat, Ship and the Chandeleur islands, to the southward, are designated as belonging to Louisiana?

A. It colors the whole of them in the same way as the outline of Louisiana is colored. While it colors them it leaves one or two by accident uncolored.

Q. In photographing these atlases and maps is the coloring on the original reproduced in the photographic copy?

A. The action of photography does not reproduce the color.

Q. How is the color then reproduced?

A. It is put on by hand.

Q. Can you say of your own knowledge, who colored this photographic copy of map No. 48?

A. I cannot personally.

Q. As to map No. 49 you have the same to say?

A. Yes sir.

F. C. ZACHARIE, states as follows:—

I knew William H. Wilder very well. I knew him before the civil war and after the civil war. He was a civil engineer and my recollection is that he was connected with the State land office prior to the civil war.

By Mr. DYMOND:

Q. Was he affiliated with the Northern or Southern forces at the time of the civil war, do you remember?

A. I don't remember; my impression is, however, that he remained here and took the oath.

Q. Took the oath of allegiance?

A. Yes sir, and I heard he was employed by the Federal Government by the military authorities.

Mr. DYMOND: Counsel for Louisiana states that he will endeavor to photograph map No. 49 in four separate negatives assemble them and produce a print from such assembled negatives and submit the same to counsel for the State of Mississippi to ascertain if it will be a satisfactory copy of said map.

Mr. DYMOND: Counsel for the State of Louisiana now offer, pro-

764 duce and file in evidence, a copy of the January 1881 issue of the Transactions of the American Society of Civil Engineers from which the following extract on page 15 on the subject of the removal of the foundation and transfer of a light house by J. W. Putman associate A. S. C. E. is taken, to wit:

"Borings made on the island revealed the fact (plate 2) that it was a bank of loose sand, and worn and broken sheels to a depth of about 20 feet. Below that was an old and submerged grass marsh, from which pieces of sod were brought up, containing all the little roots and fibres of the ordinary marsh sod. It had evidently been formed at or above the surface of the water, and plainly indicates the subsidence of the continent."

Page 16.

"Below this marshy vegetable deposit of about 20 feet, was found a hard, sandy stratum, making a firm and solid bearing for the piles. Yellow pine piles, 75 feet long, were procured and thoroughly creosoted at the creosote works of the New Orleans and Mobile railroad."

And in lieu of copying the whole of said pamphlet into the record, counsel for the State of Louisiana requests that the counsel for the State of Mississippi upon being given a copy of said pamphlet consent to the extract being taken?

765 Mr McCLURG: Counsel for the State of Mississippi consent.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence the following documents furnishing counsel for the State of Mississippi copies thereof, to wit: Document 13, being article 7 of the treaty between England, France and Spain, February 10th 1716, translation appearing in the American History Leaflets of September 10th, 1892, No. 5.

Document No. 14, treaty between England, France and Spain, February 10th 1716, article 6 (7) translation as appearing in Treaties and Conventions Concluded between the United States and Other Powers Since July 4th 1776, Washington 1889.

Document No. 15. Article 7 of the treaty of 1763 between France, Spain and England.

Counsel not yet having received the copies of this article will produce the document for filing by the commissioner and furnish counsel for Mississippi with a copy thereof.

Document No. 16. Treaty between the United States and Spain, October 27th 1795, taken from the Revised Statutes of the United States, 43rd Congress, 1st session, 1873-74, pages 7044-5, being articles 1, 2 and 4 of said treaty.

In connection with Document No. 16, counsel for the State of Louisiana, now offer, produce and file in evidence certified
766 photo prints of the maps made by Andrew Ellicott late commissioner on behalf of the United States, taken from the Journal of Andrew Ellicott and showing the southern boundary line between the United States and Spain, fixed at 31 degrees north latitude—11

tude, described as follows, in the certificate of John Hay, Secretary of State of the United States, "being a photograph of map appearing in and described as belonging to the Journal of Andrew Ellicott, late commissioner on behalf of the United States during part of the year 1796, the years 1797, 1798, 1799 and a part of the year 1800 for determining the boundary between the United States and the possessions of His Catholic Majesty in America."

Document No. 17, treaty between the United States and France April 30th 1803, taken from the Revised Statutes of the United States 43rd Congress, first session, 1873-74, pages 232 and 233, being article one and two of said treaty.

Document No. 18. Act of Congress for an amicable settlement of the limits of Georgia, and authorizing the establishment of a government in the Mississippi territory. Approved April 7th 1798. U. S. Statutes at Large, chap. 28, vol. 1, page 549.

Document No. 19. Description of Louisiana. Message of Thomas Jefferson, President of the United States. Extracts from Annals of Congress 8th Congress, 2nd session, appendix 1804 and 1805 767 being pages 1498, 1504 and 1505.

Document No. 20. Act of Congress erecting Louisiana into two Territories, and providing for the temporary government thereof. Approved March 26th, 1804. U. S. Statutes at Large. Chap. 38 Vol. 2. Page 283. Being sections 1 and 12 of said act.

Document No. 21. Act of Congress to enable the people of the Territory of New Orleans to form a constitution and State government. Approved February 20th, 1811, United States Statutes at Large, vol. 2, p page 641, being sections 1, 2, 3, 4 and 5 of said act.

Document No. 22. Act of Congress concerning an act to enable the President of the United States under certain contingencies to take possession of the country lying east of the Perdido. Approved March 3rd 1811. U. S. Statutes at Large. Vol. 3, page 472.

Document No. 23. Act of Congress to enable the President of the United States under certain contingencies to take possession of the country lying east of the River Perdido. Approved January 15th 1811. U. S. Statutes at Large. Vol. 3, page 471.

Document No. 24. Act of Congress for the admission of the State of Louisiana into the Union etc. Approved April 8, 1812. U. S. Statutes at Large. Chapter 1, vol. 2, page 701.

768 Document No. 25. Act of Congress to enlarge the limits of the State of Louisiana. Approved April 14, 1812. U. S. Statutes at Large chap. 57, vol. 2 page 708. Being sections 1 and 2 of said act.

Document No. 26. A resolution of the legislature of the State of Louisiana, giving consent to the enlargement of the State of Louisiana. Approved August 4th, 1812.

Document No. 27. Resolution of Congress relating to Spanish provinces. Approved January 15th, 1811. U. S. Statutes at Large Vol. 3, page 471.

Document No. 28. Act of Congress for ascertaining the titles and

claim to land in that part of Louisiana which lies east of the River Mississippi and the island of New Orleans. Approved April 25th 1812. U. S. Statutes at Large. Chap. 67. Vol. 2, page 713. Being sections 1 and 2 of said act.

Document No. 29: Act of Congress authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi territory and west of the River Perdido. Approved Feb'y 12, 1813. *Approved February 12, 1813.* U. S. Statutes at Large, vol. 3, page 472. Being sections 1, 2 and 3.

769 Document No. 30. An act of Congress to enlarge the boundaries of the Mississippi territory. Approved May 14th 1812. U. S. Statutes at Large. Chapter 84, vol. 2, page 734. Being section 1 of said act.

Document No. 31. Act of Congress to enable the people of the western part of the Mississippi territory to form a constitution and State government etc. Approved March 1, 1817. U. S. Statutes at Large. Chapter 23, vol. 3, page 348. Being sections 1, 2 and 3 of said act.

Document No. 32. A resolution of Congress for the admission of the State of Mississippi into the Union etc. Approved December 10, 1817. U. S. Statutes at Large, vol. 3, page 472.

Miss BESSIE MEADE, recalled, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this map of Louisiana in the atlas of M. Cary, published in Philadelphia in 1814, and compare it with map 48 which I have now shown you and state by whom the coloring on the photo print was made?

A. I did the coloring on the photo.

770 Q. Have you carefully and faithfully followed the colors on the original as nearly as it was possible for you to do so?

A. Yes sir, as near as it was possible for me to do it.

No cross-examination.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, Document No. 33, being Bulletin of the United States Geological Survey, No. 171, Department of the Interior. 56th Congress, 1st session, House of Representatives. Document No. 720. Being boundaries of the United States, and Territories with outline of history of important changes. (Second edition.) Gannett. Washington. Government Printing Office 1900. The reference to Louisiana appearing on page 36 beginning there, and beginning again on page 110, with the map of Louisiana on the following page next to page 110. The reference to Mississippi appearing on page 109 and the map of Mississippi on the following

page 164. And tenders to counsel for the State of Mississippi copy of said bulletin.

It is agreed between counsel for Louisiana and Mississippi that it shall be unnecessary to reproduce in the record the balance of said Bulletin No. 171.

771 ALBERT ESTOPINAL, JR., witness re-called on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND :

Q. In January 1901 and in the months following, the record in this case shows that you were the chairman of the boundary commission appointed by Governor Heard of the State of Louisiana on behalf of the State of Louisiana, to ascertain if it were possible, after a conference with a similar commission appointed by Governor Longino of the State of Mississippi, on behalf of the State of Mississippi, to see if the boundary difficulty could be settled amicably. Are you aware of the preparation by that Louisiana amicably boundary commission of a map or chart setting forth the calaim of Louisiana as it was then contended for?

A. Yes sir.

Q. Do you recognize this Exhibit E as being a certified copy of the original on file in the office of the clerk of the Supreme Court in Washington, D. C., in this suit, as a certified copy of that original exhibit?

A. Yes sir, I do.

Q. At the time that this chart was prepared and while it was in preparation for the purpose of furnishing to the Mississippi Boundary Commission, the contentions of Louisiana, did, or did not, the Louisiana Boundary Commission have any knowledge of the report which was made by W. C. Hodgkins assistant — of the United States Coast and Geodetic Survey on this subject, at the request of Mr. McLain member of Congress from Mississippi?

A. No sir, I know that the Louisiana commission knew absolutely nothing about it. Had no knowledge that any map was being prepared or had been prepared by Mr. Hodgkins.

772 By Mr. ZACHARIE :

Q. You have already stated that you were born and raised and resided in the parish of Saint Bernard and that you were the district attorney of that district?

A. Yes sir.

Q. Where is the country situated, or that territory, that is commonly known as La Chinch?

A. It is on the eastern end of the parish of Saint Bernard, it is contiguous to what is known as the Louisiana marsh.

Q. The territory in dispute here called the Louisiana marshes?

A. Yes sir.

Q. Does it immediately adjoin?

A. Yes sir.

Q. Had you occasion to visit the Chinch prior to the storm of October 1st 1903?

A. Yes sir.

Q. For what purpose did you visit that and how often?

A. I had occasion to make frequent excursions to Shell beach and other occasions I went duck shooting in the marshes.

Q. Did you shoot snipe also?

A. Ducks and snipe.

Q. What direction from this disputed territory, the Louisiana marshes, does La Chinch lie?

A. South by west, I suppose southwest south, southwesterly, that is about the direction.

Q. What is the character of that territory, or was, at the time when you visited it prior to the storm of October 1st 1893.

A. Well, pretty much of the same character that it is now, save that it was not so cut up as it is now.

Q. What would you call it; was it high land or marsh land or swamp land?

A. It was marsh land.

Q. Did you have occasion to traverse that territory La Chinch, prior to the first of October 1893 and to what extent, if any?

773 A. As I said before, I had occasion to go to Shell beach and in reaching that point it is necessary to go through some prairie land there lying between the high land and known as La Chinch and the coast of Lake Borgne; and on other occasions I went slightly into the prairie at points further east than Shell beach, just penetrated the prairie some little distance to shoot birds.

Q. Did you traverse at different times the smaller or larger portion of La Chinch?

A. The smaller portion?

Q. In what portion was that, was that adjoining or away from the territory in dispute in this suit?

A. That was a considerable distance away from the territory in dispute.

Q. How many miles would you say?

A. That I don't know enough about, even approximately, I don't know how far I was from the territory in dispute.

Q. How wide is this territory known as La Chinch, about, as I suppose you never measured it?

A. I should judge it was about 20 or 25 miles wide.

Q. What do you mean by wide, extending to the eastward?

A. Extending east of it.

Q. Then how broad is it, north and south, about?

A. I don't believe I could say with any accuracy, even approximately, the distance.

Q. When you have visited it, for instance, you say snipe shoot how have you traversed this territory, on foot, on horseback or boat?

A. On foot and in boats.

Q. In so far as you have traversed it in foot was it practicable walk through hunting?

A. Not entirely, no sir.

Q. Why was it not.

A. Because the marshes are very much cut up by bays and goons and bayous.

774 Q. Was that the case prior to 1893?

A. To some extent, yes sir.

Q. Did you visit this territory La Chinch, after the storm of October 1st, 1893?

A. Yes sir, I had occasion to hunt there on two or three occasions this last winter.

Q. How long after the storm of October 1st 1893, did you visit there?

A. I cannot fix any time definitely that I was there: last winter hunted there on two or three occasions.

Q. What changes, if any, did you find in that territory when you last visited it, compared with what it was prior to the storm of October 1st 1893?

A. I found that in several sections of the marsh where it was possible prior to the storm of 1893, to go afoot, that since then it was all open country, open water, the country had been cut up, and there had been bays and lagoons formed where before there was land: there was so little land left there it had the appearance of a lake in high tide, in ordinary tide even.

Q. What is the character of that marsh as compared with what you call the Louisiana marshes which are in controversy in this suit?

A. There is no difference between them at all.

Q. Are you certain that you had not visited that territory after the storm of October 1st 1893 until 1902.

A. Yes sir, I had been through it before, between those dates, but I cannot say just when.

Q. Often?

A. Several times, I just can't say how often, I know that by following the line of the railroad between La Chinch ridge and Shell beach, you find that where, prior to the storm of 1893, prairies and marshes contiguous, or touching or bordering the line of railroad, were solid; to day they are all open, or rather covered with water, it has been formed into lagoons or bays or whatever you may call it.

775 Q. What portion, if any, of the La Chinch country, does the railroad traverse. Does it go through the sides, or center or end of it?

A. I will have to look at the map a moment. The railroad ex-

tenda out at right angles from the Mississippi river to a point on the western end of La Chinch, and then at right angles from that point up to Lake Borgne, it is right on the western part that it turns to go out to Lake Borgne.

Q. When it goes up to Lake Borgne at right angles does it traverse the center or sides of La Chinch?

A. It would traverse the western end of it.

Cross-examination.

By Mr. McCLURG:

Q. Do you know Mr. Estopinal, when that railroad was built?

A. Yes sir, I do.

Q. When?

A. About 15 or 17 years ago, I believe, about, I cannot fix the exact date in my mind.

Q. That railroad is about 20 or 23 miles a little southeast of La Chinch—your best judgment?

A. La Chinch is about 35 miles east of the railroad.

Q. These hunting expeditions that you have spoken of, did not extend as far east as this lake?

A. No sir, I have never been out that far hunting; I have been around through that country, I went on one occasion from Shell beach.

Q. Where is Shell beach?

A. Right here, that is on the southern coast of Lake Borgne.

Q. Has the territory about that railroad changed materially since it was built?

A. Yes sir, it has.

Q. In what respect?

776 A. In this, heretofore that area of land of the marsh which prior to the storm of 1893 was a solid quantity has been removed or dug out and there are lagoons there instead, to day bays etc. And those conditions prevail through the La Chinch prairie which was comparatively solid, prior to the storm of 1893. It is indented now with bays and lagoons.

Q. From your observation and personal experience of that country do you not think that it was higher and drier in 1812 and 1817, than it is now?

A. I judge so. Yes sir.

Q. You know of your own knowledge of no violent changes or disfigurations that the surface suffered by the result of storms like that of 1893?

A. No sir, I do not.

Q. I believe your name appears on the pleadings as one of the attorneys in this case?

A. Yes sir.

Q. And you have heard several of the witnesses testify as to the different storms within their recollection and knowledge?

A. Yes sir.

Q. Is it not fair to presume that that condition of storm and wind has been going on for ages past?

A. I suppose so. That is a natural presumption, I suppose.

Q. At different intervals?

A. Yes sir.

Q. And it is a fair presumption also, is it not, that each recurring storm left its imprint on the configuration of this country?

A. That is a matter of opinion altogether and of argument. I suppose there may be some—

Q. The purpose of the question was to show that it is a fair presumption, as I stated, that the storm — 1893 is not the only storm that has done the damage along this country that we are talking about?

777 A. I suppose not. There have been other storms.

Q. Were you ever in Nine Mile bayou?

A. Yes sir.

Q. How did you get there?

A. I went by way of Lake Borgne through Petite pass.

Q. Did you go in south of Nine Mile bayou, did you go through the bayou?

A. Yes sir.

Q. Where did you go?

A. We went through Nine Mile bayou and then right on down in a southerly direction.

Q. How far down did you go. Here is Drum bay and Lake Eugenio?

A. I don't recall the names of the bays and lakes. I went there but once, but I doubtless went through most of those bays, that is, most of those that lie in a direct southerly direction from Nine Mile bayou.

Q. How did you travel?

A. I travelled in a nap-tha launch.

Q. When was that?

A. About 1895, I think.

Q. Did you return by the same route?

A. No sir; I did not go back that way.

Q. Which way did you get out of there?

A. Possibly by Lake Eloï, but I am not sure, and then went on down to the mouth of Terre Boeuf and then up that bayou to Lake Leary.

Q. You stated, in your original examination today, that the Exhibit E in your original bill of complaint, as acknowledged on this map Exhibit E, is a certified copy and the same as the original from which it was taken. I understand you to make that answer from your observation of the physical appearance of the map and without going into any critical measurements or examination of the two maps in comparing them; is that true?

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A. Yes sir.

Redirect examination.

By Mr. ZACHARIE :

Q. You have stated you went through Nine Mile bayou in 1895 in a launch. Can you state what was the most southerly point that you reached or about. Did you go down as far as Drum bay for instance ?

A. I went right on down through the marshes out to the Gulf again.

Q. Out to the Gulf?

A. Yes sir.

Q. What was the draft of that launch, if you can state it?

A. Three feet.

Q. Did you find difficulty in any place, if so, state what, in getting through ?

A. I believe my pilot got into the wrong bayou, got into shallow water somewhere, shortly after leaving Nine Mile bayou, and we were unable, owing to the shallowness of the water to proceed in that bayou and had to turn back and take another route.

Q. Were there any other portions of your trip, if so what, that you found yourself scraping through the mud ?

A. No sir. We had no difficulty after that.

Q. How was the tide, do you know ?

A. The tide was moderately high.

Q. You stated a moment ago, to the attorney, Mr. McClurg, for the State of Mississippi, that you had only generally observed this map Exhibit E. I see upon this map a certificate signed by yourself and four other members of the boundary commission on the part of Louisiana, certifying to this. Did you, or did you not, examine critically, or only cursorily, this map comparing it with the original ?

A. I examined it now cursorily simply.

Q. I mean to say when you put this certificate on the map; did you, or did you not, with these other gentlemen examine it critically ?

A. Of course we did examine it very critically.

Q. Did you look at the distances, and general features of the map, to see whether it was correct or not ?

A. Yes sir.

Q. Do you remember if these other gentlemen, whose names are signed to the certificate, whether they did the same or whether they did so jointly together ?

A. We did so together, we did so jointly.

Recross-examination.

By Mr. McCLURG :

Q. While different names appear to this certificate, they all appear to be in the same handwriting. The names of Albert Estopinal Jr., chairman, is that of your own handwriting on this map?

A. No sir; it is not; that is simply a copy.

Q. This certificate on this map seems to be a copy of a resolution which your commission had adopted?

A. Yes sir.

Q. And it certifies to the correctness of the resolution rather than of the map, does it not?

A. The resolution should speak for itself; I don't remember the exact terms.

Q. Resolved that it is the sense of the Louisiana Boundary Commission etc. That certificate is to that resolution?

A. Yes sir.

Q. And you do not undertake to certify by those signatures to the correctness of the map?

A. No sir.

780 Q. I notice in the red lines on this map, Exhibit E, which I gather are substantially the same as the markings as made by your commission in conference with the commission from Mississippi on the map then before them, that at the point of division between Mississippi and Alabama, that you go down 18 miles from the shore by your red line marking. Tell us, if you can, why you did that. Why you went 18 miles south of the shore before you turned westward?

A. I judge that we followed the channel line right on through here.

Q. To the Alabama line?

A. Yes sir.

Q. Didn't you do it because the act of Congress admitting Mississippi into the Union, provided that the line should extend 18 miles from the shore?

A. That may have been considered; but it coincided or tallied with the boundary as we fixed it here through the channel and met at this 18 mile point.

Q. Do you understand that this deep water channel extends on to that point dividing Alabama and Mississippi?

A. Not absolutely; but there appears to be a pretty deep channel all the way to this point.

Q. What is termed in this controversy is a deep water channel which diverges to the southward at a distance a little to the southwest of the end of Ship island, does it not?

A. Yes sir.

Q. Have you ever seen any map or chart which undertook to fix upon its face, except Exhibit E, or some maps which have been made for the purpose of this litigation, to designate upon its face the

deep water channel lie out of the mouth of Pearl river and the one now claimed as the boundary between Louisiana and Mississippi. Did you ever see it so written on any other map?

A. No sir.

781 ERNEST J. BELLOCQ, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this photo print marked map No. 20—

A. Yes sir.

Q. And also at this photo print marked map No. 20-a?

A. Yes sir.

Q. Will you please look at this photo print marked map No. 34?

A. Yes sir.

Q. And this photo print marked map No. 34-a?

A. Yes sir.

Q. Will you please look at this photo print marked map No. 48?

A. Yes sir.

Q. And this photo print marked map No. 49?

A. Yes sir.

Q. And state by whom they were printed?

A. I printed them.

Q. Were they printed from negatives made from the original maps?

A. Yes sir.

Q. Did you compare your photo prints with the originals to see whether they were correct photo prints, after you made them?

A. Yes sir. I compared both of them.

Q. How did you find them to be, correct?

A. Yes sir.

Q. You compared all of them that you just testified to?

A. Yes sir.

Q. And found them to be all correct?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

782 Q. I wish you would please tell us how much larger the original of No. 49 is than this photo print that is exhibited?

A. The size of it is 11 x 14.

Q. The original of map No. 49?

A. All of them that I made are 11 x 14 inches.

Q. What is the size of the original of 49?

A. I never measured the size.

Q. Measure it please?

A. It is 44 inches long by 39½ inches wide.

Q. The photo copy is about 1/9 the size of the original?

A. Yes sir.

Q. And a similar comparison will hold as to the other original and photo prints?

A. Yes sir, because it is some distance away, you know from lens.

Redirect examination.

By Mr. DYMOND:

Q. Do you mean to say that all of the other maps, that you photographed, are of the same size of this map?

A. No, not the same size but the paper I used is all 11 x 14.

Q. You were not asked in regard to the paper, but in regard to the maps, whether the same proportion of small size of the photo print to large size of the map held in every one of these cases, did it or not? Do you understand the question?

A. No sir.

Q. You have photographed some ten or 12 maps; were they all of the size of this original map?

A. No sir.

Q. Were any of them smaller?

A. Yes sir.

Q. Any of them much smaller?

A. Yes sir.

783 Q. Well, then, if it would take nine of the photo prints of map No. 49 to equal the original map No. 49, would it take nine of each of the other photo prints to equal to each of the other maps?

A. No sir.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer, produce and file in evidence, the said photo prints being maps Nos. 48 and 49.

Mr. McCLURG: Mississippi reserves an exception to the offer of photo copy of map 49, on the ground that it is too dim, and imperfect to be intelligible.

HUGH C. SMITH, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. Parish of Saint Bernard.

Q. How old a man are you?

A. I am forty five.

Q. What is your profession ?

A. Civil engineer.

Q. How long have you been a civil engineer ?

A. About twenty three years.

Q. When did you first move into the parish of Saint Bernard ?

A. In 1878.

Q. Did your practice your profession as that of a civil engineer, in the parish of Saint Bernard ?

A. Yes sir.

Q. Are you a graduate of any school of civil engineering ?

A. No sir.

Q. What official position do you hold in connection with the parish of Saint Bernard, if any ?

A. I was surveyor for the parish of Saint Bernard.

Q. What official position, if any, do you hold at present ?

A. In Saint Bernard ?

Q. No sir, in the State ?

A. I am chief engineer of the Oyster Commission of Louisiana.

Q. When were you made chief engineer of the Oyster Commission of Louisiana ?

A. In August 1902.

Q. Prior to that were you continuously practicing your profession as a civil engineer ?

A. Yes sir.

Q. Were you ever employed to make a map of the parish of Saint Bernard ?

A. Yes sir.

Q. By whom were you employed ?

A. By the police jury, the present police jury.

Q. Of the parish of Saint Bernard ?

A. Yes sir.

Q. When were you employed if you can recollect ?

A. I think it was about, in the fall of 1895 and the spring of 1896.

Q. Did you make up a map of the parish of Saint Bernard ?

A. Yes sir.

Q. How long did it take you to make up that map ?

A. About six months.

Q. Will you please look at the large map which is now hanging before you, marked Parish of Saint Bernard, Louisiana, and state whether that is a map of the parish of Saint Bernard which was provided by you under the authority of the police jury of the parish of Saint Bernard and which for the purpose of identification of the photo prints we will call map No. 52.

A. That is it.

Q. Were you familiar with the territory of the parish of Saint Bernard prior to your making up of that map ?

A. Yes sir.

785 Q. From what source did you get the data which enabled you to make up the map?

A. From the Government township plats and from Government records and records from the courthouse of Saint Bernard.

Q. Did you make any surveys at all or had you made any that were embodied in the making of that map?

A. Yes sir; I made a good many surveys in the parish.

Q. Were you able to get any assistance from the map records of the courthouse of the parish of Saint Bernard?

A. Only the township maps which were made by deputy United States surveyors.

Q. What has become of the other maps of the parish of Saint Bernard?

A. If there were any they must have been destroyed.

Q. By what occasion?

A. By the burning of the courthouse.

Q. Do you remember when that occurred?

A. I don't remember the exact date of the burning of the courthouse.

Q. Did you confer with the authorities of the parish of Saint Bernard as to what constituted the territory of the parish of Saint Bernard prior to the making of this map?

A. Well, no. I can't say that I did.

Mr. McCLURG: Mississippi objects to leading question on this subject. Let the witness state what he did.

A. They asked me to make up a map of Saint Bernard parish as I understood Saint Bernard, the territory that I understood to belong to Saint Bernard parish and from the records that I got from the Saint Bernard courthouse, some from the land office at Baton Rouge, and some from Washington, this map here is a result of a compilation of those records.

786 Q. Was that map approved by the police jury of the parish of Saint Bernard, or by the president of the police jury?

A. By the president and secretary.

Q. Does it bear their signature on its face?

A. Yes sir.

Q. When you prepared this map did you have in mind any existing controversy with the State of Mississippi as to boundary?

A. None whatever.

Q. Will you please look at this photo print which, for the purposes of identification is to be marked map No. 52, and state whether it is a phot-print representing as correctly as it is possible to do by photographic process, the original map made by you?

A. While it is not a very clear photograph I should say it was perfectly accurate being a mechanical operation.

Q. It is on a different scale is it not, from the map which you made?

A. Yes sir, considerably reduced.

Q. What are the dimensions of the map prepared by you?

A. I think it is about 6 x 9 feet.

Q. What are the dimensions of the map which you now have before you?

A. 42 inches by 32 inches.

Q. I notice on this map No. 52 that you have indicated thereon the private land grants. From what source did you get the data which enabled you to designate and delineate Isle à Pitre as being the property of the Louisiana Navigation Company? Sections 22 and 23 township 11, range 19 east, as being the property of Meloche; a part of section 29 and section 32, of the said township as being also the property of Meloche and the fractional sections 3 and 10 of township 13, range 16 east, as being the property of Meloche?

787 A. I got those from the records in the courthouse at the parish seat.

Q. I notice you have also sections 19 and 30, or parts of those sections, in township 11, range 19 east, as being part of the property of the Louisiana Navigation Company. Was that also gotten from the same source, that information?

A. Yes sir. That property is assessed in the parish of Saint Bernard.

Q. Will you please look at Exhibit A of the State of Mississippi and notice the red ink line projected on said exhibit as indicating the boundary claimed by the State of Mississippi and note the locality in which that line, if projected on this large map 52, would run, that is, the corresponding point or line?

A. Yes sir.

Q. Having made the comparative examination which you have now done will you please examine this township plat which we will call Document No. 38, being the township plat of townships 10 and 11, south range 17 east, and township 19, south range 18 east, southeastern district east of the Mississippi river, and state whether the area represented by this township plat is within the disputed area in this controversy between Louisiana and Mississippi?

A. If it is within the limits of this line?

Q. If you will, for the moment, refer to the black ink line designated as the line claimed by Louisiana in her original bill and the red line designated as the Mississippi line on Exhibit A of Mississippi attached to the deposition of W. M. K. Dukate, and state whether the territory shown by this township plat, Document No. 38, is embodied within those lines and therefor- within the disputed area?

A. Yes sir, it is.

788 Mr. Dymond: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said Document No. 38 and tenders to the counsel for the State of Mississippi, a copy of same.

Q. Will you please look at this township plat which, for purpose of identification will be called Document No. 39, and state whether or not it is within the disputed area as defined by this Exhibit Mississippi, it being the township plat of township 11, south range 18 east, southeastern district of Louisiana.

A. It is, yes sir.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the said Document No. 39, and tenders to counsel for the State of Mississippi, a copy thereof.

At this stage of the proceedings, the hearing was adjourned, April 26th 1904, at 10.30 a. m. to be resumed at the same place.

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Resumption of Proceedings.

NEW ORLEANS, April 26th 1904—10 30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m.

Present: Hon. Frank H. Mortimer, commissioner.

Hon. Walter Guion, attorney general of the State of Louisiana.

Mess. John Dymond Jr., F. C. Zacharie and Albert E. Topinal Jr., associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Hon. Jos. N. Flowers, ass't att'y gen'l of Mississippi.

The examination of HUGH C. SMITH resumed.

By Mr. DYMOND:

Q. Mr. Smith, will you please look at this township plat marked Document No. 7, being the township plat of township 13, south range, 19 east, southeastern district of Louisiana and state whether that is the next township, coming eastward, to the one concerning which you have just been testifying, and whether it is also in the disputed area?

A. Yes sir, it is.

Q. Mr. Smith, will you please look at this township plat being that of township 11, south range 20 east, southeastern district of Louisiana, east of the Mississippi river and for identification marked Document No. 40, and state whether that is the next township to the eastward, concerning which you have just been testifying, and whether it is within the disputed area?

A. Yes sir.

Q. In making these comparisons and noting the various township

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plats that you are testifying about, have you before you the original map of the parish of Saint Bernard as made by you?

A. Yes sir, that is the original map.

Q. Which, for purposes of identification was marked map No. 52?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said Document No. 40, and tender to counsel for the State of Mississippi a copy of same.

Q. Bearing in mind, the course taken by the red ink line on Exhibit A of Mississippi attached to the deposition of W. K. M. Dukate, and applying that line to the map of the parish of Saint Bernard, No. 52, now before you, will you please look at this township plat of township 12, south range 16 east, southeastern district of Louisiana, and state whether it is, or covers the most western portion of the Saint Bernard peninsular to the east of Lake Borgne?

A. Yes sir.

Q. Is that, or is that not, within the disputed area as defined by the red line on Exhibit A of Mississippi?

791 A. No sir; I should say not.

Q. Does it lie to the westward of the red line drawn down through Nine Mile bayou?

A. Yes sir.

Q. Does this township plat represent part of the same peninsular the balance of which is included within the red ink line concerning which you have been questioned?

A. Yes sir; it does.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said township plat being marked Document 41, and tenders to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat being that of township 12, south range 17 east, southeastern district of Louisiana, east of the Mississippi river, and state whether the territory represented by this plat is or is not within the disputed area as shown on Exhibit A of Mississippi?

A. Yes sir.

Q. What portion of it is within the disputed area?

A. I should say the extreme eastern edge; I think that line comes down about the lakes here; probably it might touch it; it is hard to tell from this map because it does not show the townships.

Q. Is the township concerning which you are now testifying, does it lie immediately east of the township concerning which you have just previously testified?

A. Yes sir.

Q. Is that part of the same peninsular of the parish of Saint Bernard?

A. Yes sir.

792 Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer, produce and file in evidence the said township plat marked Document 42 and tenders to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat being the plat of township 12, south range 18 east, southeastern district of Louisiana, and state whether it covers territory within the disputed area?

A. Yes sir, it does.

Q. Does it cover part of Nine Mile bayou?

A. Yes sir.

Q. Is this township plat which you have now before you, the plat of the township immediately east of the one concerning which you have just previously testified?

A. Yes sir, east of 12-17.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of the witness now offer, produce and file in evidence, the said township plat mark- Document 43, and tender to counsel for the State of Mississippi a copy of the same.

Q. Will you please look at this township plat being the plat of township 12, south range, 19 east, southeastern district of Louisiana, east of the Mississippi river, and state whether it represents territory within the disputed area?

A. Yes sir, all of it.

Q. Is this the township lying immediately to the east of the township concerning which you have just previously testified?
793

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said township plat marked Document No. 44, and tender to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat, being a plat of township 12, south range, 20, east, southeastern district of Louisiana, east of the Mississippi river, and state whether the territory represented by that township plat is within the disputed area. I notice that this map also covers a small portion of township 12, south range 21, east; is that correct?

A. Yes sir.

Q. Is that within the disputed area in this suit?

A. Yes sir.

Q. Does this township plat represent the territory immediately east of the territory represented by the township concerning which you have just previously testified?

A. Yes sir.

Q. Does this township 12, south range 21, east, lie immediately east of township 12, south range, 20, east?

A. Yes sir.

Q. About what amount of territory, comparatively speaking, is in township 12, south range 21, east?

A. I would say 15 or 20 acres.

Q. Is it just a small point of that island lying to the northeast of the township?

A. Yes sir.

794 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said township plat marked Document 45, and tender to the counsel for the State of Mississippi a copy of the same.

Q. Will you please look at this township plat being that of township 13, south range 16 east, southeastern district of Louisiana, east of the Mississippi river, and state whether it represents part of the peninsula of Saint Bernard?

A. Yes sir, it does.

Q. Does that township lie immediately along the eastern shore of Lake Borgne?

A. Yes sir.

Q. Is the land represented by that township in the disputed area?

A. No sir.

Q. Is the township, however, part of the same peninsula as Saint Bernard?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer, produce and file in evidence the said township plat being marked Document 46, and tender to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat being township 13 south range 17, east, and state whether it is part of the peninsula of Saint Bernard?

795 A. It is. I have looked at it and it is a part of the peninsula of Saint Bernard.

Q. Is this, or is this not, within the disputed area as shown on the Mississippi Exhibit A, or any part of it within the area?

A. No sir; it may touch a point on the extreme eastern—I can't tell from that map exactly where this township comes.

Q. When you say that map, what map do you refer to?

A. The map of Saint Bernard made by myself, marked No. 52.

Q. I understood you to say a moment ago that you could not tell from that map where the township line came; from what map were you referring to?

A. I was referring to Mississippi's Exhibit A.

Q. Are there any township lines drawn on this Exhibit A of Mississippi?

A. No sir.

Q. Are there township and section lines drawn on this large map of the parish of Saint Bernard known as map No. 52?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said township plat marked Document No. 47, and tender to counsel for the State of Mississippi a copy of same.

Q. Will you now please look at this township plat being that of township 13, south range 18, east, and state whether in accordance with Mississippi's Exhibit A, this township covers any territory in the disputed area, if so, what part and in what portion of the township?

A. I should say all of that was within the disputed territory except the very extreme southwest corner.

796 Q. Will you please carefully compare Mississippi's Exhibit A, with map No. 52 before you, and see whether there is any indication of Billy Lawsons lake on map Mississippi's Exhibit A, and note where Billy Lawsons lake is on map 52.

A. No sir, I see on Exhibit A, Billy Lawsons lake seems to be marked Treasure bay.

Q. Do you then find that this township plat of township 13 south range 18, east, does or does not include territory in the disputed area?

A. I find that it does.

Q. Except in what portion?

A. Perhaps the extreme southwestern portion. Although the township line shows that it just crosses the north end of the Lake of the Mound and it does the same here on Exhibit A.

Q. Is this township a part of the same peninsula of Saint Bernard represented by your map No. 52.

A. Yes sir. It is.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of witness now offer, produce and file in evidence, the said township plat as Document No. 48 and tender to counsel for the State of Mississippi a copy of same.

Q. Was the township plat concerning which you have testified and which has been marked Document No. 48, immediately east of the township concerning which you previously testified?

A. Yes sir.

Q. In taking up these townships are you proceeding from the western extremity of the eastern shore of Saint Bernard, eastwardly?

A. Yes sir.

797 Q. And then as you traverse the coast as far westward as the land extends, do you begin at the next township south and run along the range eastward?

A. In an easterly direction, yes sir.

Mr. McCLURG: Counsel for Mississippi objects to all these leading questions.

Question withdrawn.

Q. In taking up the identification of these township plats, with map No. 52 said map being the official map of the parish of Saint Bernard, will you please state what order has been followed in considering and comparing the township plats?

A. I began on the eastern border of Lake Borgne which was the western end of the peninsula of Saint Bernard, that portion of it, and proceeded in an easterly direction to the end of the territory that was sectionalized and laid off into townships.

Q. Is all of the territory in that official map No. 52 sectionalized and laid off in townships?

A. Yes sir.

Q. When you finished one line of townships how did you proceed in taking up the next line of townships?

A. I took the one just south of it and proceeded eastward in the same manner as all townships range in that section of the country east of the Mississippi river, north and south, east and west.

Q. Will you please look at this township plat, being that of township 13, south range 19 east, and state whether or not it represents any territory within the disputed area in this case?

A. Yes sir, it does.

Q. It represents what?

A. It represents from Oak Mound bayou all of this township represented here, township 13, south range 19 east, north of Oak Mound bayou, approximately all of it lies within the disputed area.

Q. What geographical position does this township bear as to its territory with the township plat concerning which you have just previously testified?

A. It is immediately east of it.

Q. It is a part of the same Saint Bernard peninsula shown on map No. 52?

A. It is.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the township plat marked No. 49 in connection with the testimony of the witness and tender a copy thereof to the counsel for the State of Mississippi.

Q. Will you please look at this township plat being that of township 13, south range 20, east, southeastern district of Louisiana, east of the Mississippi river, and state whether any territory covered by it is within the disputed area?

A. Yes sir.

Q. What portion of it?

A. The northwestern portion of it; the northern portion of it you may say, because it includes all that part.

Q. What geographical position does the territory represented by this township plat bear to that township concerning which you have just previously testified?

A. It lies immediately east of it.

Q. Is this territory represented by this township part of the same peninsula of Saint Bernard shown on your map No. 52?

A. It is.

799 Q. Does this now cover the territory as far eastward as land is shown on this map No. 52?

A. Well, all except the Chandeleur islands which are shown on a small sketch in the lower corner of the map.

Q. Are the Chandeleur islands within the disputed area as shown on this Exhibit A of Mississippi?

A. No sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana offer, produce and file in evidence the said township plat being marked Document No. 50 and tender to the counsel for the State of Mississippi a copy of the same.

Q. Concerning these various township plats running from Document No. 38 to Document No. 50 inclusive, and including Document No. 7 is the territory represented by all of these township plats, part of the peninsula of Saint Bernard, shown on the official map of the parish of Saint Bernard, map No. 52?

A. Yes sir, it is.

Q. And part of what is known as the Louisiana marshes?

A. Yes sir.

Q. With the exceptions which you have stated, do these township plats cover the territory in dispute between Louisiana and Mississippi so far as the land is concerned?

A. Yes sir, they do.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer, produce and file in evidence the certified extracts from the tract books and records of the United States land office showing the selections by the State of Louisiana and the approval to the State of Louisiana by the United States Government under the provisions of the swamp land act of the United States Congress of March 2nd, 1849, of all of the lands in township 12, south range 16, east; township 13, south range 16, east; township 10, south range, 17, east; township 11, south range 17, east; township 12, south range 17, east; township 13, south range 17, east; township 10, south range 18, east; township 11, south range 18, east; township 12, south range 18, east; township 13, south range 18, east; township 11,

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south range 19, east; township 12, south range 19, east; township 13, south range 19, east; township 10, south range 20, east; township 11, south range 20, east; township 12, south range 20, east; township 13, south range 20, east; south eastern district of Louisiana, east of the Mississippi river the same being Exhibit "G" attached to the original bill of complaint on file in the office of the clerk of the Supreme Court of the United States in this suit a certified copy whereof is now tendered to the State of Mississippi, the offer in evidence being the offer of the original Exhibit "G" in the custody of the clerk of the Supreme Court of the United States.

801 Q. Will you please look over the list of selections and approvals as shown by this copy Exhibit "G" and state whether, as to townships and ranges, they cover the Saint Bernard peninsula and whether they also cover the area in dispute in this case between Louisiana and Mississippi?

A. Yes sir, they do according to my understanding.

Q. Do they cover the territory which is commonly called the Louisiana marshes?

A. The portion of the territory commonly called the Louisiana marshes, yes sir.

Q. Are the Louisiana marshes included within these various townships described in this copy of Exhibit "G"?

A. Yes sir.

Q. Is all of that part of the Louisiana marshes which is in dispute between Louisiana and Mississippi in this case, included in this Exhibit "G"?

A. Yes sir, I think it is, according to the red lines shown on map Exhibit "A" of Mississippi.

Mr. DYMOND: In connection with the Exhibit "G," a copy of which has been tendered to counsel for the State of Mississippi, counsel for the State of Louisiana now offer, in addition the certificate attached to said Exhibit "G" signed by Walter L. Cohen, register and Charles P. Johnson, receiver of the United States land office at New Orleans, Louisiana.

Q. Mr. Smith, will you please look at your large map No. 52, being the official map of the parish of Saint Bernard, and state whether sections 23, 24, 25, and 26 of township 10, south range 20, east, in the southeastern land district of Louisiana, Saint Bernard parish, are within the disputed area in this suit?

802 A. Yes sir, they are within the disputed area.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the original patent granted by the State of Louisiana to Richard Pindell on the 20th of March, 1867, the same being on file in the clerk's office of the United States Supreme Court

and being Exhibit "H" attached to the bill of complaint, a certified copy whereof having been furnished to the State of Mississippi.

Q. Will you please state whether sections 33 and 24 in township 10, south range 20, east, in the southeastern land district of Louisiana, parish of Saint Bernard, are within the disputed area in this case?

A. They are.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the original patent 195 by the State of Louisiana to Richard Pindell for the said lands issued on March 20, 1867, the same being original Exhibit "I" attached to the bill of complaint and on file and in the custody of the clerk of the Supreme Court of the United States, the offer being of the original exhibit and a certified copy of same being furnished to counsel for the State of Mississippi.

803 Q. Will you please notice if sections 27, 28 and 32 of township 10, south range of 20, east, southeastern land district of Louisiana, Saint Bernard parish are within the disputed area?

A. Yes sir, they are.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of the original patent No. 196 issued by the State of Louisiana to Richard Pindell for the said lands on March 20th, 1867, being original Exhibit "J" attached to the bill of complaint herein on file and in the custody of the clerk of the Supreme Court of the United States, Washington, D. C. in this suit, the offer being of the original exhibit and a certified copy thereof having been given to the counsel for the State of Mississippi.

Q. Will you please, Mr. Smith, notice if sections 20, 21, 28 and 29 of township 10, south range 20, east, southeastern district, east of the Mississippi river, are within the disputed area?

A. I find them all except section 21, the fractional section 21.

Q. They are denominated in the patent as being three islands?

A. There is not room enough on this little island; there
804 are two other islands here but the section is not designated on this map.

Q. From your knowledge of the facts, are you prepared to state whether sections 20, 21, 28 and 29 of township 10, south range 20, east, are within the disputed area?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of the patent No. 4055 issued by the State of Louisiana to Henry J. Leovy on January 26th, 1883, for the said lands with the certificate of the register of the State land office of

Louisiana thereon under date of April 5, 1904, the said certified copy to be marked Document 51, and tenders to the counsel for the State of Mississippi a copy of the same.

Q Will you please state whether the east fractional half of the northwest fractional quarter of section 4 in township 11, south range 20, east, in the southeastern district of Louisiana, east of the Mississippi river, parish of Saint Bernard is within the disputed area in this case.

A. Yes sir, it is.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the original patent 5093, issued 805 by the State of Louisiana for said lands to Joseph C. Gilmore on April 27, 1894, with the certificate of the register of the State land office and clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard, under date of April 2, 1904, the said exhibit to be marked Document No. 52, and tender to counsel for the State of Mississippi a certified copy thereof.

Q. Will you please notice whether the north half of section 32 and the fractional southwest quarter of section 29 in the township 11, south range 19, east, Southeastern East of River land district, in the parish of Saint Bernard, are within the disputed area in this case?

A. Yes sir, they are.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of the original patent 5094, issued by the State of Louisiana to S. Meloche for this land on April 27, 1894, with the certificate of the register of the State land office and clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard, State of Louisiana under date of April 2, 1904, the said offer to be marked Document No. 53 and tender to the counsel for the State of Mississippi a certified copy thereof.

Q. Will you please notice if fractional section 35, township 11, south range 20, east, in the Southeastern, East of River land district, parish of Saint Bernard, is in the disputed area in this case?

A. Yes sir, it is.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of original patent No. 5095 issued by the State of Louisiana for these lands to S. Meloche on April 27, 1894, together with the certificate of the register of the State land office and clerk of court and *ex-officio* register of conveyances of the parish of Saint Bernard, State of Louisiana, under date of April 2, 1904, and offer to be marked Document No. 54, and a certified copy thereof being tendered to counsel for the State of Mississippi.

Mr. DYMOND: Counsel for the State of Louisiana now refers to act 14 of 1892 of the legislature of the State of Louisiana, creating the board of commissioners for the Lake Borgne Basin levee district and tender to the counsel for the State of Mississippi a copy of said law.

Q. Will you please notice whether the following townships compose the peninsular of Saint Bernard and whether they also cover the area in dispute in this case between Louisiana and Mississippi, to-wit: Township 11, south range 17, east; township 11, south range 18, east; township 11, south range 19, east; township 11, south range 20, east; township 12, south range 13, east—

A. Township 12, south range 13, east, would not be in the disputed area.

Q. These townships which I have indicated to you and interrogated you about, prior to township 12, south range 13, east, would they be within the disputed area?

A. Yes sir.

Q. Do you understand, Mr. Smith, that the question is not confined to the disputed area; you are also asked if it forms part of the peninsular of Saint Bernard?

A. Yes sir, I understand that part.

Q. Township 12, south range 16, east?

A. Yes sir.

Q. Township 12, south range 17, east?

A. Yes sir.

Q. Township 12, south range 18, east?

A. Yes sir.

Q. Township 12, south range 19, east?

A. Yes sir.

Q. Township 12, south range 20, east?

A. Yes sir.

Q. Township 12, south range 21, east?

A. Yes sir.

Q. Township 13, south range 16, east?

A. Yes sir.

Q. Township 13, south range 17, east?

A. Yes sir.

Q. Township 13, south range 18, east?

A. Yes sir.

Q. Township 13, south range 19, east?

A. Yes sir.

Q. Township 13, south range 20, east?

A. Yes sir.

808 Q. Township 14, south range 16, east?

A. Yes sir.

Q. Township 14, south range 17, east?

A. Yes sir.

Q. Township 14, south range 18, east ?

A. Yes sir.

Q. Township 14, south range 19, east ?

A. Yes sir.

Q. Township 14, south range 20, east ?

A. Yes sir.

Q. Township 15, south range 16, east ?

A. Yes sir.

Q. Township 15, south range 17, east ?

A. Yes sir.

Q. Township 15, south range 18, east ?

A. Yes sir.

Q. Township 15, south range 19, east ?

A. Yes sir.

Q. Township 16, south range 16, east ?

A. Yes sir.

Q. Township 16, south range 17, east ?

A. Yes sir.

Q. Township 16, south range 18, east ?

A. No sir, that don't exist unless it is a part of the Chandeleurs, es, there are some little points here, Mr. Dymond.

Q. Do those various townships represent the peninsular of the parish of Saint Bernard, lying east of a line drawn north and south through Lake Borgne ?

A. To about the middle of Lake Borgne ?

Q. Yes sir.

A. Yes sir.

Q. Do those townships include as a portion of its area, that part of the Louisiana marshes in dispute in this case ?

09 A. Yes sir, it does.

Mr. DYMOND : In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, a certified copy of the original deed of the register of the state land office made by him in accordance with the provision of act 14, 1892, to the board of commissioners for the Lake Borgne basin levee district, under date of April 2, 1895, and covering, amongst other lands the lands concerning which the witness has just been examined ; together with the certificate of the clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard showing the registration of the said original deed in his conveyance office ; together with the certificate of the said clerk of court and *ex-officio* register of conveyances to the correctness of this certified copy ; which said offer is to be marked Document No. 55 and a copy thereof tendered to counsel for the State of Mississippi ; the list of lands in the said Document No. 55 as being located in the parish of Saint Bernard, beginning on page 10 of said document.

Mr. DYMOND : Counsel for the State of Louisiana now offer, produce and file in evidence the following exhibits :

810 First. A certified copy of the original act of sale by Richard Pindell to Henry J. Leovy on April 8th, 1867, before George William Christy, a notary public in the city of New Orleans, State of Louisiana, of the fractional sections 23, 24, 25 and 26 in township 10, south range 20, east; the fractional sections 23 and 34 in township 10, south range 20, east; the fractional sections 27, 28, and 32 in township 10, south range 20, east; acquired under patents 194, 195 and 196 of the State of Louisiana, dated March 20, 1867, with the certificate of the custodian of notarial records for the city of New Orleans, Peter Stiff, being the original Exhibit "K" attached to the bill of complaint on file and in the custody of the clerk of the Supreme Court of the United States, at Washington, D. C. in this case, the offer being of the original exhibit and counsel for the State of Mississippi having been furnished with a copy of same.

Second. A certified copy of the act of sale by Henry J. Leovy to Joseph C. Gilmore on March 2nd, 1892, before Theodore Contonio, notary public for the parish of Orleans State of Louisiana, of certain lands situated in the southeastern land district of Louisiana,

811 in the *in the* parish of Saint Bernard, embracing the whole of the island known as the Isle au Pitre and other lands, to-wit: the fractional sections Nos. 23, 24, 25 and 26 in township 10, south range 20, east; fractional sections 33 and 34 in township 10, south range 20, east, and fractional sections 27, 28 and 32 in township 10, south range 20, east; with the certificate of registration in the conveyance office of the parish of Saint Bernard together with the certificate of the said notary; being the original Exhibit "L" attached to the bill of complaint now on file and in the custody of the clerk of the Supreme Court of the United States at Washington, D. C. in this case, the offer being of the original exhibit and a certified copy thereof having been tendered to the counsel for the State of Mississippi.

Third. A certified copy of an act of sale by Henry J. Leovy to Joseph C. Gilmore under date of March 2, 1892, before Theodore Contonio, a notary public for the parish of Orleans, State of Louisiana, of certain lands situated in the southeastern land district of Louisiana and parish of Saint Bernard, adjacent to Isle au Pitre being three islands in sections 20, 21, 28 and 29 in township 10 south range 20, east; southeastern, east of the river land dist. with the certificate of registration thereon and of the notary

812 thereto attached being the original Exhibit "M" attached to the bill of complaint and on file and in the custody of the clerk of the Supreme Court of the United States at Washington, D. C., in this case; the offer being of the original exhibit annexed to the bill and a certified copy having been tendered to the counsel for the State of Mississippi.

Fourth. A certified copy of an act of sale by Richard Pindell to Henry J. Leovy on April 18, 1867, before George William Christy, notary public for the parish of Orleans, State of Louisiana, of the north west quarter of section 15, in the township 14, south range

east, southeastern land district of Louisiana in the parish of Saint Bernard; with the certificate of Peter Stiff, custodian of the original records thereto attached; being the original Exhibit "Z" attached to the bill of complaint on file and in the custody of the clerk of the Supreme Court at Washington, D. C., in this case; the original being of the original Exhibit "Z" annexed to the bill; and a certified copy having been tendered to counsel for the State of Mississippi.

fifth. A certified copy of the original act of sale under private signature by Joseph C. Gilmore to the Louisiana Navigation Company Limited, under date of October 10th 1894 of certain lands situated in the southeastern land district of Louisiana in the parish of Saint Bernard, embracing the island known as Isle Pitre and other lands, to-wit: the fractional sections 23, 24, 25 and 26 in township 10, south range 20, east; the fractional sections 34, in township 10, south range 20, east; the fractional sections 27, 28 and 32, in township 10, south range 20, east; with the certificate of registration thereon and the certificate of the clerk of the court and *ex-officio* register of conveyances of the parish of Saint Bernard thereto attached; the said document to be numbered Document No. 56, and a certified copy thereof being tendered to counsel for the State of Mississippi.

sixth. A certified copy of act of sale from the board of commissioners of Lake Borgne Basin levee district to Lazaro Lopez and William K. M. Dukate, of sections 26 and 21, also islands N, M, L and K, in township 12, south range 18, east, in the southeastern district of Louisiana described as being a part of the lands acquired by the vendor from the State of Louisiana under and by virtue of the provisions of act 14 of the General Assembly for the year 1892, passed before James D. St. Alexandre, a notary public for the parish of Saint Bernard together with the certificate of Joseph D. St. Alexandre, clerk and *ex-officio* recorder showing the same to have been recorded in the conveyance records for the parish of Saint Bernard on the 15th of March 1902, which document is marked Document No. 8, and has already been offered in evidence and a copy of same tendered to counsel for the State of Mississippi.

seventh. A certified copy of an act of sale under private signature by the board of commissioners for the Lake Borgne Basin levee district on September 16th 1898, to Charles Sanger of Bay Saint Louis, Mississippi, of the following lands situated in the parish of Saint Bernard State of Louisiana, to-wit: the fractional south half section 15; the east half; the fractional southwest quarter and fractional east half of the northwest quarter of section 21; all of sections 22, 27 and 28; the north half of section 33; the north half section 34; the south half of the northwest quarter and southwest quarter of section 23; the west half of the northeast quarter and west half of section 26; the west half and northeast quarter and the northwest quarter of section 35; all in township 11, south

range 19, east; southeastern land district, east of the Mississippi river; with the acknowledgment and certificate of registration thereon and the certificate of the clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard under date of April 2nd 1904, the said offer to be marked Document No. 57, and 815 a certified copy thereof being tendered to counsel for the State of Mississippi.

Eighth. A certified copy of an act of sale under private signature by the board of commissioners for the Lake Borgne basin and levee district on June 17th 1899, to George H. Dunbar, of the following described lands, to-wit: The southeast quarter of the northeast quarter; the southeast quarter of the southwest quarter and the southeast quarter of section 11; the northeast quarter of section —; the northeast quarter of the northwest quarter; the south half of the northwest quarter and the south half of section 12; and all of section 14; the north half of the northwest quarter and the east half of section 23; all of section 24; all of section 25; the east half of the northeast quarter and southeast quarter of section 26; the east half of the northeast quarter of section 35; the north half of the south half and south half of the north half of section 36; in township 11, south range 19, east. The northwest quarter of the northwest quarter, the south half of the northwest quarter and the southwest quarter of section 19; the west half of section 30; in township 11, south range 20, east. The island designated as Preachers 816 island, embracing all of fractional sections 13, 14, 15, 22, 23; the fractional west half of section 24, in township 12, south range 18, east. In the southeastern land district of Louisiana, east of the Mississippi river. Being the same lands acquired by the board of commissioners from the State of Louisiana, under section 11 of act 14, 1892, by deed of the register of the State land office of April 2nd 1895; together with the acknowledgement and certificate of registration thereon and the certificate of the clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard; said offer to be marked Document No. 58, and a copy thereof being tendered to counsel for the State of Mississippi.

Ninth. A certified copy of an act of sale before James D. St. Alexandre notary public for the parish of Saint Bernard on March 7th 1902, by the board of commissioners for the Lake Borgne Basin levee district, to George Ruppel, of the following described lands; the east half of section 33; the west half of section 34; in township 11, south range 20, east; the northwest quarter of section 3, and the northeast quarter of section 4; in township 12, south range 20, east. In the southeastern land district of Louisiana, east of the Mississippi 817 river; together with the certificate of registration thereon and the certificate of James D. St. Alexandre clerk of court and *ex-officio* register of conveyances thereto attached. The said offer to be known as Document No. 59, and a certified copy thereof being tendered to counsel for the State of Mississippi.

At this stage of the proceedings, the hearing was adjourned by the commissioner for recess to be resumed at the hour of 2.15 p. m. at the same place and date.

Resumption of Proceedings.

2.15 P. M.

Pursuant to adjournment for recess, the hearing was resumed at the same place, at the hour of 2.15 p. m. all parties being present.

The examination of Mr. HUGH C. SMITH resumed.

By Mr. DYMOND :

Q. Will you please state whether Isle au Pitre, Half Moon island, and these other islands of the character of the Louisiana marshes, are divided by townships and sections, as being part of the survey made by Richardson and Powell, as Louisiana territory ?

A. Yes sir, they are, and are so shown on the township maps.

Cross-examination.

By Mr. FLOWERS :

Q. When did you say this survey was made ?

A. Which survey, Mr. Flowers ?

Q. The survey shown by this map No. 52.

A. At different dates. Some of them in the '40's, 1842, 1843, 1845; but the majority of Saint Bernard was surveyed by the deputy surveyors Powell and Richardson.

Q. When was that ?

A. As I stated, at different dates, some of them in 1843, some of them in 1845.

Q. Had you anything, yourself, to do with any of the surveying of any part of this territory ?

A. As regards what, as regards laying off sections ?

Q. As regards the actual survey ?

A. I have made numerous private surveys.

Q. In making private surveys you were not establishing original lines, were you ?

A. No sir.

Q. Did you have anything to do with the surveying of this territory or any part of it, shown by this map No. 52.

818 A. No sir; not relative to laying off townships and sections.

Q. When did you prepare this map ?

A. In 1896, I finished it; I think I began it in 1895.

Q. Where did you say you got your data ?

A. The majority of it was compiled from Government records and some from actual surveys of sub-divisions of old Spanish and French grants.

Q. What Government records ?

A. Surveys that were made by Deputy Surveyors Powell and Richardson that were on file in the courthouse at Saint Bernard, as township maps.

Q. You said something about getting part of your data from out of the United States Land Office, did you not?

A. Yes sir.

Q. What was that?

A. That was relative to the marsh land being turned over to the State of Louisiana.

Q. Where did you get your idea as presented by this map as to the boundary lines of Saint Bernard parish?

A. It had already been certified by the United States deputy surveyors and shown as such among their records.

Q. And as to the boundary lines you took those records for it?

A. Yes sir.

Q. Do you know anything, of your own knowledge, about any part of this territory?

A. Yes sir; I know a good deal about it.

Q. But, you do not know anything personally about the location of those lines?

A. No sir; not about the location of those lines.

819 Q. Your testimony here, as to the location of any section or township and as to whether any part of this territory is within the disputed territory, or is part of it, you have testified altogether from this map prepared by you, have you not?

A. That and the Government records.

Q. In making your answers to questions asked you on your examination in chief, you have depended altogether on this map No. 52, have you not?

A. Well, yes.

Q. You have not testified here to anything except what is shown by this map No. 52, have you?

A. And those township plats which this big map is a reproduction of.

Q. The township plats, or maps you refer to, are taken from this map No. 52?

A. No sir.

Q. Are they not parts of this map?

A. Yes sir; but this map No. 52 was taken from the township plats.

Q. Those plats show, purport to show, exactly what this map No. 52 shows?

A. Yes sir.

Q. But those township plats and this map No. 52 present everything you know about the location of this territory and the township and range section lines, do they not?

A. Yes sir; as regards lines and township and sections.

Q. Your answers to the questions on examination in chief were all based on this map and those plats?

820 A. Yes sir.

Q. You have not pretended to answer anything of your knowledge about the location of these lines, and whether any part of the land shown by this map, is in the disputed territory?

A. Well, I have—in the disputed territory.

Q. Yes?

A. I have never established any township or section lines in that part of the parish, but I have in other portions of the parish.

Q. You say you have established township lines?

A. Yes sir, portions of them, extended them.

Q. In what part of the territory did you do that?

A. Near the southwest coast of Lake Borgne.

Q. Is that southwest coast of Lake Borgne within the disputed territory or part of the disputed territory as you understand it?

A. No sir.

Q. Have you established, or helped to establish any township or range line within the disputed territory?

A. No sir, I have not.

Q. And you have not, I believe you said, testified to any facts about the location of these lines except what is shown by these township plats and this map No. 52?

A. Yes sir; I have gone entirely by those.

Redirect examination.

By Mr. DYMOND:

Q. In your position as chief engineer and surveyor of the oyster commission, have you ever had an occasion to look up the matter of the township and range lines in the disputed area?

821 A. Yes sir.

Q. Have you ever found them with any relative accuracy?

A. In the disputed area?

Q. Yes?

A. Well, no sir, I have never looked them up systematically. I have tied surveys to section corners, located as near as it was practicable to do, from prominent points, where the section line was shown on the plat. In the southwestern part of the Louisiana coast here, I have made pretty accurate surveys and tested them by measurement by chain and found them to tally very nicely.

Q. Did you ever make any surveys of oyster bedding grounds for people interested with Lopez and Dukate, south of Pirate's point near the township line dividing township 12-18 from 13-18?

A. Yes sir; I have.

Q. Did you locate those bedding grounds with reference to the township and section lines as shown on the plat of survey by the government, or on your map No. 52?

A. As near as practicable to do so without running the township line out with an instrument.

Q. Have you made any other surveys of oyster bedding ground in this disputed area?

A. Yes sir; several.

Q. Please state for whom?

A. For Dunbar and others.

Q. Where did you make your surveys for Dunbar?

A. Just east of Pirate's point, southern extremity of Pirate point.

822 Q. Is that in township 12, south range 18, east?

A. Yes sir.

Q. Is that in the disputed area?

A. Yes sir.

Q. Did you make those with reference to any section lines in this township?

A. The same as those for Dukate and others, or the people to whom Dukate was representing.

Q. Did you make any surveys for any one else?

A. Yes sir; I made a survey for Salvador Rousso in Bay Breaux.

Q. Where did you locate his bedding ground?

A. On the south west side of Shell point.

Q. Where is Shell point?

A. You want me to designate it?

Q. Designate it, not by pointing it out, but by describing it?

A. It is in township 12, south range 18, east. I also made some surveys in Blind pass.

Q. Is that to the westward of Nine Mile bayou?

A. Yes sir; to the west of Nine Mile bayou.

Q. Is that west of the red ink line?

A. Yes sir.

Q. Which comes down through Nine Mile bayou?

A. Yes sir.

Q. On Exhibit A of Mississippi?

A. Yes sir. I made also—

Q. This survey of oyster bedding ground which you made for Salvador Rousso; was that in the disputed area, or not?

823 A. That was in the disputed area—east of Nine Mile bayou.

Q. You were about to say you made other surveys?

A. One for Mr. Darling.

Q. Where did you make that?

A. In False Mouth bay; that is also west of Nine Mile bayou.

Q. Is False Mouth bay, according to Mississippi Exhibit A in the disputed area, or not?

A. Well, according to my map and our knowledge of that section of the country that is called Nine Mile Bayou bay.

Q. What are you referring to now?

A. The name of the bay in Exhibit A of Mississippi. The body of water on my map of Saint Bernard and on the Government maps is called Nine Mile bay.

Q. What is that called on Mississippi's Exhibit A?

A. It is called False Mouth bay.

Q. Is that the bay you had reference to when you spoke a moment ago of making a survey?

A. No sir; I had reference to one still further west. It really opens out into two bays, it is known by a different name, because there are islands intervening.

Q. Islands that separate it from the other big body of water?

A. Yes sir.

Q. How do these names on Mississippi's Exhibit A compare with the names with which you are familiar as given to the bodies of water on your map No. 52 and on the United States Government townships surveys?

A. I notice quite a difference.

Q. Do you know where the names were gotten which appear on Mississippi's Exhibit A?

824 A. No sir.

Redirect examination.

By Mr. FLOWERS:

Q. I believe you said the name of the bay into which Nine Mile bayou enters, flows, is called on your map, Nine Mile Bayou bay?

A. I don't know if I said on my map particularly; but on the Government charts and Government plats.

Q. What is it called on your map?

A. I don't believe I have any name there for it at all. No sir, I have not.

Q. I want to ask you one thing, you have not been asked about at all. Just for my own information. Is there any water course, body of water of any kind, connecting Lake Borgne with the gulf of Mexico, directly south?

A. What part of Lake Borgne?

Q. I mean connecting the most southern loop of Lake Borgne with the gulf of Mexico, south?

A. No sir, not now. There was once upon a time.

Q. Within your recollection?

A. No sir, previous.

Q. What evidence have you of that?

A. By the old bayou bed which is still in existence, but it is perfectly dry now.

Q. All the way from Lake Borgne to the Gulf?

A. No, not all the way; it is dry a portion of the way.

Q. Is it still there, still in existence a part of the way?

A. Part of the way, yes sir.

Q. How far?

825 A. Only down through the marshes; but where it comes in contact with higher land and cultivated land it is all filled up.

Q. About how far is that?

A. About 18 miles.

Q. Is it still in existence about 18 miles?

A. Yes sir, going out of Lake Borgne.

Q. Well, but connected at one time with Lake Borgne?

A. That is Bayou La Loutre, that connected with Bayou Yaclosky.

Q. Is that bayou connected with Lake Borgne?

A. That bayou is connected with Lake Borgne now, Bayou Yaclosky.

Q. Is that lake connected with the other lake you name?

A. That bayou.

Q. The other bayou I mean?

A. It at one time connected with Bayou La Loutre and Bayou La Loutre emptied into the Gulf, therefore, of course it had a connection with Lake Borgne.

Q. You say there is no body of water connecting Lake Borgne with the Gulf south?

A. No sir: not from any point near there.

Q. But it does extend part of the way?

A. There is an old bayou that does, yes sir, Bayou La Loutre.

Q. How far is it from that most southern extremity of Lake Borgne south through that country to the Gulf?

A. To where the bayou empties into the Gulf?

Q. Yes?

A. About 33 or 34 miles.

Q. And there is a body of water covering about 18 miles of that?

826 A. Yes sir.

Q. That you estimate, of about 18 miles?

A. Yes sir, approximately.

Q. I don't remember the names of the surveyors you mentioned awhile ago?

A. Powell and Richardson.

Q. And when did they make their surveys of this Saint Bernard parish?

A. I will have to refer to those charts, Mr. Flowers, to give you an exact date. Some of them were made in 1843 and some in 1845.

Q. All made by those men?

A. I think most all of Saint Bernard were given out under contract to different surveyors by the Government.

Q. By what Government?

A. By the United States Government; and they in turn were approved by the surveyor general of Louisiana.

Q. At whose instance did you say these men made these surveys?

A. By the order of the United States Government.

Q. They were employed to do it by the United States Government?

A. They had a contract for it.

Q. The State of Louisiana did not have any thing to do with it?

A. No sir—well, I suppose it was under the direction of the surveyor general of Louisiana.

Q. When they made these surveys they were not surveying Saint Bernard parish particularly, were they; they were not sent to mark that territory off into townships and range sections?

A. That is what they did; but whether they took it at Saint Bernard parish, I am not prepared to say.

Q. But that was their duty?—

A. To lay off that territory without any regard to parishes and to give a general outline of the contour and topography of the country.

Q. It had no reference to the boundary lines between parishes or between States?

A. No sir; I think not.

By Mr. DYMOND:

Q. Will you please state what townships and what sections compose what is called Isle à Pitre?

A. Township 10, south range 20, east, sections 21, 22, 23, 24, 25, 26, 27, 28, 32, 33 and 34.

Q. Are those sections given in the transfer and approval by the United States to the State of Louisiana, being Exhibit "G" which you have in your hand?

A. Yes sir.

Q. Now what sections of township 11, south range 20, east, if any, form part of Isle au Pitre?

A. Section 4, section 5, section 6, section 7, and section 8.

Q. Are those also found in Exhibit "G" being approval by the United States to the State of Louisiana?

A. Yes sir.

Q. Will you please tell us what townships, with ranges and what sections, compose Half Moon island?

A. Half Moon island is a part of four townships.

Q. Please designate them and give the section of each township as you designate the township?

A. On the west township 10, south range 17, east, sections 36 and 37.

Q. Will you please look at this Exhibit "G" which is the approval by the United States to the State of Louisiana, and say whether you find these sections of this township as having been approved by the State of Louisiana?

A. Township 10, south range 17, east.

Q. Do you understand the question. You have mentioned certain sections of township 10, south range 17, east, as composing part of Half Moon island?

A. Yes sir.

Q. Will you please state whether you find those sections as being

set forth in this Exhibit "G" which is the approval of certain land by the United States to the State of Louisiana.

A. No sir; I do not. I do not find these lands are on there if I understand you right.

Q. You certainly do not understand me right. What sections do you find in township 10, south range 17, east, on Document No. 3 as being a part of Half Moon island. You think you understand that question?

A. Yes sir.

Q. Answer the question if you understand it. Read the question to the witness.

A. I only find fractional section 36.

Q. Do you find fractional section 36 as having been approved to the State of Louisiana by the United States Government in this Exhibit G?

A. Yes sir.

829 Q. Will you please state what sections of township 10, south range 18, east, compose Half Moon island?

A. Fractional sections 29, 31, 32 and 33.

Q. Do you find any reference to any selection and approval by the United States to the State of lands in township 10, south range 18, east, in this copy of Exhibit "G"?

A. Yes sir; I do. All of township 10 except section 16.

Q. Will you please state what sections of township 11, south range 18, east, compose Half Moon island?

A. Five and six, section five and section six.

Q. Will you please state whether you find those sections as having been selected by and approved to the State by the United States, in this map Exhibit G?

A. Yes sir.

Q. What sections do you find in township 11, south range 17, east, as composing part of Half Moon Island?

A. Fractional section 1, 2—

Q. I asked you about Half Moon island. You want to listen attentively to these things so you can answer intelligently?

A. Fractional section 1.

Q. Will you please state whether this copy of the original Exhibit H, shows section 1 as having been selected by and approved to the State by the United States Government?

A. Yes sir, it does.

Q. Will you please state what sections of township 10, south range 17, east, compose Grassy or Marsh island?

A. Fractional section 26.

830 Q. Will you please state whether you find any record of the approval of this section to the State of Louisiana by the United States Government, in this copy of Exhibit G?

A. Yes sir.

Q. Will you please — what sections of township 11, south range 17, east, compose Round island?

A. Fractional section 2 and fractional section 11.

Q. Will you please state whether this Exhibit G shows any record of the approval of the United States to the State of these two sections?

A. It does.

Q. Will you please state what sections of township 11, south range 17, east, compose Petite Bois island?

A. Fractional section 14, and fractional section 23.

Q. Will you please look at the copy of Exhibit G and state whether it shows any record of approval by the United States to the State of Louisiana of these two sections?

A. It does.

ALCIDE GUTIERREZ, witness, recalled on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please state whether that is your signature as the secretary of the police jury of the parish of St. Bernard, attached to this official map of the parish of Saint Bernard, which we call map No. 52?

A. Yes sir; that is my signature as secretary of the police jury.

Q. Was this map made for and paid for by the police jury?

831 Q. Was the map made for and paid for by the police jury of the parish of Saint Bernard?

Mr. FLOWERS: Mississippi objects to leading questions.

Q. Will you please look at this document which we will call Document No. 60 and state what it is?

A. This is a bill of expense for the year 1896 and adopted by the police jury.

Q. What parish?

A. Police jury of the parish of Saint Bernard.

Q. Was, or was not, the money therein budgeted for the preparation of a map, this map which is now before you and which is marked map No. 52?

A. Yes sir.

Q. Was the money paid to Mr. H. C. Smith?

A. Yes sir, it was paid to him.

Q. Do you, or do you not, recognize this to be the map which was made for the police jury of the parish of Saint Bernard?

A. Yes sir. That is the same map.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, a certified copy of the budget of the parish of Saint Bernard

for the year 1896, to be marked Document No. 60, and tenders a certified copy thereof to the counsel for the State of Mississippi.

Q. Is that your signature Mr. Gutierrez, to the exhibit, namely, Document No. 60?

832 A. Yes sir.

Cross-examination.

By Mr. FLOWERS:

Q. You say Mr. Smith made this map?

A. Yes sir.

Q. Who employed him to do it?

A. The police jury of the parish of Saint Bernard.

Q. He made it at the expense of the parish of Saint Bernard?

A. Yes sir.

Q. He made it for the authorities of the parish of Saint Bernard?

A. I don't know that it was made for the authorities.

Q. I mean he made it at their expense?

A. Yes sir.

Q. When did he do this?

A. I believe it was in 1896, in the early part of 1896.

Q. Did they, or not, leave it *ot* him to determine what Saint Bernard parish was?

A. Well, I suppose he was a civil engineer, he was employed I believe for that purpose.

Q. They just employed him to prepare a map of Saint Bernard parish and this is what he delivered to them?

A. Yes sir. And that is what we consider the parish of Saint Bernard; that is what I have always taken to be the parish of Saint Bernard.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence a copy of a resolution of the police jury of the parish of Plaquemines adopted January 7th, 1901, marked Document No. 61, and tender to the counsel for the State of Mississippi a copy thereof.

833 At this stage of the proceedings, the hearing was adjourned by the commissioner to Thursday April 28th, 1904, by consent of counsel for the States of Louisiana and Mississippi, to be resumed on that date at the hour of 10.30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 28, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m.

Present: Hon. Frank H. Mortimer commissioner.

Hon. Walter Guion, attorney general of Louisiana.

Mess. John Dymond Jr., F. C. Zacharie and Albert Estopinal Jr., associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

834 Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the list of selected swamp and overflowed lands in townships 10, south range 17, east; township 10, south range 18, east; township 10, south range 20, east; with the certificate of the acting Commissioner of the General Land Office of the United States Government and the certificate of the register of the State land office of the State of Louisiana. The latter under date of April 11th 1904. The said offer to be known as Document No. 62, and a copy thereof being tendered to counsel for the State of Mississippi.

Mr. DYMOND: Counsel for the State of Louisiana offer, produce and file in evidence, the following exhibits, to wit: 1st. List of swamp and overflow lands in township 11, south range 17, east; township 11, south range 18, east; township 11, south range 19, east; township 11, south range 20, east; township 12, south range 16, east; township 12, south range 17, east; township 12, south range 18, east; township 12, south range 19, east; township 12, south range 20, east; township 13, south range 16, east; township 13, south range 17, east; township 13, south range 18, east; township 13, south range 19, east; township 13, south range 20, east; with the certificate of the acting Commissioner of the General Land Office of the United States Government and the certificate of the register of the State land office of the State of Louisiana, thereto attached, the latter being under date of April 26th, 1904, which offer is to be marked Document 63 and a copy thereof is tendered to counsel for the State of Mississippi.

835 Second. A certified copy of the extract of entries from the books of the register of the State land office of the State of Louisiana, in regard to the lands in township 11, south range 17, east; township 11, south range 18, east; township 11, south range 19, east; township 11, south range 20, east; township 12, south range 16, east; township 12, south range 17, east; township 12, south range 18, east; township 12, south range 19, east; township 12, south range 20, east; township 13, south range 16, east; township 13, south range 17, east; township 13, south range 18, east; township 13, south range 19, east; township 13, south range 20, east; together

with the certificate of the register of the State land office of the State of Louisiana, under date of April 26th 1904, the said office being marked Document No. 64. And a certified copy thereof being tendered to counsel for the State of Mississippi.

A. C. GONZALES, witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you reside ?

A. I live in the parish of Saint Bernard.

Q. How long have you resided there ?

A. I was born and raised there.

Q. What is your post office address ?

A. Saint Bernard.

Q. What official position, if any, do you hold in the parish of Saint Bernard ?

A. Assessor.

Q. What are the duties of the assessor ?

A. To tax the property.

Q. Do you, in connection with your duties as assessor, make a list of all of the property in the parish subject to taxation ?

A. Yes sir.

Q. Do you keep that list in the shape of a permanent book or record for future reference if necessary ?

A. Yes sir.

Q. Will you please look at the books which rest on the table beside you and state whether they are what are called the assessor's rolls of the parish of Saint Bernard ?

A. Yes sir, from 1889 up to 1903.

Q. Do I understand you to say that you have the assessment rolls from 1889 up to 1903 ?

A. Yes sir.

Q. Has the assessment roll for the year 1904 been completed as yet ?

A. No sir.

Q. How long have you been assessor of the parish of Saint Bernard ?

A. Seven years.

Q. When does your present term expire ?

A. On the 31st of December 1904.

Q. Will that make you eight years' service ?

A. Yes sir.

Q. That would carry you back then—

A. To 1897.

Q. 1897 as the year in which you started ?

A. Yes sir. I was appointed by Governor Foster in 1897.

Q. Have you made the assessment rolls of the parish of Saint Bernard from 1897 up to 1903 inclusive?

A. Yes sir.

Q. Are you making the assessment rolls for the year 1904?

A. I am listing the properties now.

Q. Who was the assessor prior to your appointment as assessor of the parish of Saint Bernard?

A. Mr. J. C. Bourg.

Q. How long was Mr. Bourg the assessor of the parish of Saint Bernard, prior to your incumbency of that office?

A. I think Mr. Bourg was assessor about four years prior to my appointment.

Q. Do you know whether or not there was ever a fire in the parish of Saint Bernard which destroyed the courthouse of that parish?

A. Yes sir.

Q. When was that?

A. I think it was in 1883.

Q. Were the assessment records of the parish of Saint Bernard kept in the court house prior to its burning and were they in the court house at the time that the court house burned?

838 A. Yes sir.

Q. Have you, under your control, or is there in the courthouse, any of the assessment rolls or records, prior to the year 1883, so far as you know?

A. I do not think, Mr. Dymond.

Q. What became of them?

A. I don't know.

Q. Were they or were they not burned up in this fire?

A. They said they were burned. I don't know anything about that.

Q. You were not the assessor at that time?

A. No sir.

Q. What is the common repute or story in regard to the old assessment rolls or records?

A. That they were burned.

Q. How, then did the assessor proceed to make up his new assessment rolls after the fire?

A. I could not say.

Q. To what would he have to have access in regard to making up his assessment rolls?

A. He had to guide himself by the conveyance and mortgage books in the clerk's office.

Q. Was the clerk's office in the same courthouse that was burned up in 1883?

A. Yes sir.

Q. Were the conveyance and mortgage records of the clerk's

office burned up at the same time as the assessment records were burned up?

A. I think some of them were burned.

Q. Have you any idea how many were saved?

A. No sir.

Q. If the assessor did not have his old assessment rolls, because they were burned up, and if he did not have access to the conference records of the clerk's office, describing the properties

839 bought and sold because they were burned up, how would the assessor go about making up his assessment rolls?

A. By listing the properties.

Q. In what way, where would he get his information?

A. From the tax payers.

Q. Could that be easily obtained?

A. Not so very easy on account of not having anything to go by himself, you know.

Q. Could the assessor be sure that he had all of the property, same as it was on the original rolls prior to 1883, on his rolls again without being able to refer to the old rolls or to the clerk's records?

A. It is a pretty hard matter to say.

Q. Would it, or would it not be possible for any property in the lying sections to escape being put on the rolls after a fire such as have mentioned?

A. Yes sir.

Q. Have you examined the rolls from the year 1889 up to the year 1903 inclusive?

A. Yes sir.

Q. Have you, at the request of counsel for the State of Louisiana made extracts from said rolls showing the assessment of properties within the disputed area in this case?

A. Yes sir.

Q. Will you please look at this document which, for the purpose of identification we will call Document No. 65, and state by what it was made?

A. This document was made by me.

Q. From what source did you get the information that is set forth in this document?

A. From the assessment rolls filed in my office.

Q. Of what parish?

A. Parish of Saint Bernard.

Q. Does this document show the assessment of certain properties for each year running from the year 1889 up to the year 1903 inclusive?

840 A. Yes sir.

Q. Is this a duplicate of your assessment rolls or is it simply an extract showing the assessment of particular properties for particular years?

A. That is an extract—

Q. Showing what?

A. Showing the assessment of those described properties.

Q. Of particular properties?

A. Yes sir.

Q. Is this a correct extract as to the particular properties for the particular years as taken from the assessment rolls of those particular years?

A. Yes sir.

Q. I notice that there appears a certificate at the end of each year, to the correctness of the extract. Were those certificates signed by you and is that your signature thereto attached?

A. Yes sir.

Q. Where a piece of property appears on the conveyance records of the clerk's office as having been sold by one party to another party, is there any change made on your assessment rolls the following years?

A. Yes sir.

Q. What change is made?

A. I assess it to the man who purchases it.

Q. Are those changes shown on this extract marked Document No. 65, as to the changes in ownership of particular property?

A. Some, yes sir.

Q. For instance, the extract shows that for the year 1889, certain property was assessed in the name of W. V. Gilmore and J. C. Gilmore. Under what name is that property assessed today?

A. Under the name of the Louisiana Navigation Company
841 Limited.

Q. I notice that this extract of the assessment rolls, Document No. 65, shows an assessment of certain properties for the year 1903, in the name of the Louisiana Navigation Company Limited, and I notice no properties assessed for that year in the name of Joseph C. Gilmore or William V. Gilmore; why was that? or why is that?

A. Well, when I took charge of the office in 1897 I had no such name as J. C. Gilmore or J. W. Gilmore; all of those lands were assessed in the name of the Louisiana Navigation Company Limited.

Q. Was that, or was that not, due to the fact that Joseph C. Gilmore and W. V. Gilmore had previously sold their lands to the Louisiana Navigation Company Limited?

A. Yes sir.

Q. Would that same condition apply to other lands which had been sold to subsequent purchasers which showed in subsequent assessments under a different name?

A. Yes sir.

Q. Will you please look at the original assessment roll for the year 1889 and state whether that roll shows any other property assessed to either J. C. Gilmore or W. V. Gilmore, than what you have shown on this extract marked Document 65?

A. No sir.

Q. Will you please look at the original assessment roll for the

year 1890 and state whether that original roll shows any property assessed to W. V. Gilmore or J. C. Gilmore, other than that which you have set forth on your extract marked Document No. 65?

A. No sir.

Q. Will you please look at the original assessment roll for the year 1891 and state whether that original roll shows any property assessed in the names of William V. Gilmore or J. C. Gilmore,
842 other than that which you have shown on your extract being Document No. 65?

A. No sir.

Q. Will you please look at the original assessment rolls for the year 1892, and state whether the said original rolls show any property assessed in the name of J. C. and Wm. V. Gilmore other than that shown on your extract being Document No. 65?

A. No sir.

Q. Will you please look at the assessment rolls for the year 1893 and state whether or not you find on that assessment roll assessed in the name of J. C. Gilmore, property which does not appear on your previous assessment rolls?

A. Well—

Q. To find any additional property assessed to J. C. Gilmore, you will have to look at the rolls to find that out?

A. Of course.

Q. Will you look at the rolls?

A. You mean for that particular year?

Q. For the year 1893; and then compare it with the previous year.

A. Yes sir.

Q. In what year?

A. 1893.

Q. In the name of J. C. Gilmore?

A. W. V. and J. C. Gilmore.

Q. What is the description of the property in the name of J. C. Gilmore which for the first time appears on the assessment rolls of 1893?

A. In the southeastern land district embracing the whole of Isle à Pitre and other lands, viz: First, fractional sections Nos. 23, 24, 25 and 26, township 10, south range 20, east, containing 460 78/100 acres; second, fractional sections 33 and 34, township 10, south range 20, east, containing 569 72/100 acres; third, fractional sections Nos. 27, 28 and 32, township 10, south range 20, east,
843 containing 380 40/100 acres. J. C. Gilmore again. In the southeastern land district of Louisiana, adjacent to Isle à Pitre, viz: Three islands in sections 20, 21, 28 and 29, township 10, south range 20, east, Southeastern, East of River land district, containing 50 40/100 acres.

By Mr. McCURG:

Q. Please let us have in this case, the valuation returned?

A. 50 dollars.

Q. For how many acres?

A. For 1418 90/100 acres, assessed at \$50. 56 40/100 acres assessed at the same price, \$50.

Q. At what rate is the tax levied on these assessments?

A. The rate is ten mills on the levee, ten mills on the parish, and six mills on the State.

Q. On those assessments there?

A. Those? I was not assessor then, but I guess it was at the same rate of taxation.

By Mr. DYMOND:

Q. You have described in your answer, the property assessed to Mr. Joseph C. Gilmore, which appears for the first time on the assessment roll of 1893, and did not previously appear on the former assessment rolls. Now will you please look at this certified copy of the original Exhibit L, attached to complainant's bill?

A. Yes sir.

Q. If Henry J. Leovy had sold to Joseph C. Gilmore, on March 2nd, 1892, the lands described in the act of sale as Isle au Pitre and giving the detail of the other sections, townships and ranges, and if that act of sale had been registered in the year 1892 in the conveyance office of the parish of Saint Bernard, would it appear upon the assessment rolls for the following year in the name of Joseph C. Gilmore?

A. Yes sir.

Q. Suppose a party were to own land in an outlying section, of the parish, remote from ordinary travel, and were to fail to register his deed, would the assessor have any way of knowing of the transaction so that he could assess the property?

A. No sir, he would not.

Q. When land stood in the name of the board of commissioners for the Lake Borgne Basin levee district, did you put them on the assessment rolls?

A. I did.

Q. Have you, on your assessment rolls, any lands assessed in the name of the board of commissioners for the Lake Borgne Basin levee district?

A. Yes sir; but they are not—it is only to keep a register of the lands of the parish; I do not extend the taxation. I can show you on my assessment rolls.

Q. But do they pay any taxes?

A. No sir.

Q. Will you let us see one of your assessment rolls that has that on it?

A. Yes sir. They are brought forward from year to year. I mark them levee board property.

Q. Why do you carry those on your rolls?

A. Well, in the event of a sale.

Q. By whom?

A. By the levee board commissioners.

Q. To whom?

A. To certain parties; to anybody.

Q. If the lands are sold by the levee board are they then put on the assessment rolls?

A. Yes sir.

Q. Have such instances occurred in your jurisdiction where the levee board sold lands and then they were put on the assessment rolls?

A. Yes sir.

845 Q. Do you know how these lands were acquired by the levee board?

A. From the State.

Q. In what way?

A. I don't know exactly the year, but they were transferred to the board of commissioners for the Lake Borgne Basin levee district.

Q. Were they, or not, forfeited to the State for non-payment of State taxes, by previous owners?

A. They were, yes sir.

Q. Have you, on your assessment rolls, in the name of the board of commissioners for the Lake Borgne Basin levee district, any of these marsh of swamp lands which were transferred by the register of the State land office, to the board of commissioners for the Lake Borgne Basin levee district?

A. I have.

Mr. McCLURG: Let me understand now, Mr. Dymond, so that I may keep a run of it. Do I understand that all of the lands that were owned by the Lake Borgne Basin levee district, were lands that had been previously owned by anybody else?

Mr. DYMOND: No sir.

Mr. McCLURG: I understood, from his answer, that they were all so acquired.

846 Mr. DYMOND: Under section 11 of act 14 of 1892, the register of the State land office was authorized to deed to the board of commissioners for the Lake Borgne Basin levee district, all swamp and overflow lands standing in the name of the State, originally acquired by the State from the United States under the swamp land act of 1849. In addition to the above the State was authorized to transfer to the said levee board all lands which had been or would be forfeited to the State for non-payment of taxes and it is in regard to the latter lands that the witness referred to when he said that they had been previously assessed to other parties.

Q. What memorandum, if any, have you, showing the swamp and overflow lands acquired by the board of commissioners for the Lake Borgne Basin levee district, from the State, through the register of the State land office, under the deed of May 24th 1895 which I will now show you, being marked Document No. 65?

A. I have not got that memorandum.

Q. Do I understand that these do not appear on the assessment rolls?

A. They do not appear.

Q. Does the board of commissioners for the Lake Borgne Basin levee district, pay taxes on its lands?

A. No sir.

Mr. Dymond: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said Document No. 65, showing the assessments for taxes on the part of the State of Louisiana and the parish of Saint Bernard for the years 1889 to 1903 inclusive, of the properties designated in said Document No. 65, and tender to counsel for the State of Mississippi a certified copy of said document.

Q. For what taxes do you extend the valuations of property on your assessment rolls, for what departments of the government and what government?

A. I extend the taxation for the parish.

Q. State the parish?

A. Parish of Saint Bernard. State of Louisiana, and the levee district taxes.

Q. What levee district?

A. Lake Borgne.

Q. Is the rate of taxation based upon the valuation which you have put upon the properties as listed by you on your assessment rolls?

A. Yes sir.

Q. By whom are those taxes collected?

A. By the sheriff of the parish of Saint Bernard.

Q. Does he collect the State taxes, as well as the parish and levee district taxes?

A. Yes sir.

Q. You will please note in this extract, Document No. 65, the fact that Mess. George W. Dunbar, John B. Honor, the Louisiana Navigation Company Limited, Lazaro Lopez, and W. K. M. Dukate, George Ruppel, Charles Sanger, Albert L. Hunt, Charles F. Forsyth and John McGraw, are assessed for taxes as owning certain properties. Will those assessments appear in the current assessment roll which you are making up for the year 1904?

A. They will appear.

Cross-examination.

By Mr. McClurg:

Q. Since 1899 have your assessments of real estate been taken from the deed records of Saint Bernard, or, do you call upon the owner personally to return his assessment?

A. In listing the properties?

Q. Yes?

A. I generally serve them with an assessment list.

Q. And they make out the list and return it to you, including the valuations?

A. Yes sir.

Q. I notice on Exhibit No. 65 which appears to be a non resident assessment roll for the parish of Saint Bernard for 1890, in ward 6, lands designated as swamp lands on the gulf of Mexico, assessed to the Gilmores, W. V. and J. C. It is true, is it not, that this assessment does not show what section township or range this land is in?

A. Yes sir.

Q. What is meant in this assessment roll by the words "on gulf of Mexico"?

A. Well, those assessments were made, or the descriptions rather, were made by my predecessor. I never made those descriptions.

Q. This roll does not indicate the number of acres or rate of the assessment?

A. The rate of assessment, yes; they are extended right here.

Q. I see division of tax, but not the rate.

A. It—

Q. The State gets 30 cents and the parish 50 cents and the levee district 50 cents?

849 A. It does not mention the rate.

Q. The rate per cent. of the levies is what I want; does this roll show it?

A. No sir. When I file my books I fix the rate of taxation; when I am ready to file my books.

Q. Don't get away from this 1890-1891; that was before you came in?

A. Yes sir.

Q. I want you to explain this, if you can?

A. That is only an extract of the original roll that I made.

Q. And the same is true of the non-resident assessment roll for the — 1891?

A. Yes sir.

Q. And also for the year 1892?

A. Yes sir.

Q. No acreage or—

A. No acreage taxed at that time.

Q. Nor the rate levied?

A. No sir.

Q. All describing the Gilmore land as on gulf of Mexico; is true?

A. Yes sir.

Q. Now, the non-resident assessment roll for the parish of Saint Bernard for the year 1893 assesses also to the Gilmores the lands previously assessed on the gulf of Mexico as shown on the rolls for the previous years; without other or further description, and then

to that, in 1893, is added the whole of Isle au Pitre and other lands including 468 78/100 in one tract and 569 72/100 in another, 380 41/100 in another aggregating thirteen or fourteen hundred acres. I notice the cash value of all those lands is fixed at \$50.00?

A. Yes sir.

Q. And that of the taxes paid on it 30 cents went to the State, 50 cents to the parish, 50 cents to the levees; that makes \$1.30 taxes paid on thirteen or fourteen acres of land. Does it not?

850 A. Yes sir.

Q. In the description of this land that I asked about in the last interrogatory, I noticed fractional sections in the township is not given except as to part of it, in township 10. What do you understand those fractional sections to mean?

A. Well, that description was made also by my predecessor.

Q. Is there not a fixed definition or understanding in your parish as to what is meant by a fractional section?

A. Yes sir.

Q. What is it?

A. It is a part of a section.

Q. Is it a part of a full section or is it a section of land smaller than the usual sub-division of the township?

A. Smaller.

Q. It means a smaller section then?

A. No; a smaller piece of a regular section.

Q. It does not mean a smaller section than a regular section?

A. No sir; all sections are supposed to have 640 acres.

Q. I noticed for the year 1894 that the thirteen or fourteen hundred acres owned by the Gilmores and mentioned a few moments ago, are assessed at \$38.00, the State getting 22 cents the parish 38 cents and the levee board 38 cents that was all the taxes that were paid and that was the valuation of the land at that time?

A. Yes sir. I could not state how they made the reduction; I was not in the office at that time.

Q. I also notice, in this roll for 1894, assessed to J. C. Gilmore, 650 acres of land adjacent to the Isle au Pitre, at \$38, and that it was assessed to him for the year 1893 at \$50. That is correct?

A. Yes sir.

Q. Then, is it not true that this assessment roll shows that for the years 1893 and 1894, that about 2,000 acres of land, assessed to the Gilmores, were valued at \$100 in 1893 and \$76 in 1894. Is that true?

851 A. Yes sir, that is true, according to the tax rolls.

Q. I believe you said Mess. Gilmores obtained this land from the Lake Borgne Basin Levee commissioners?

A. No sir; I never said that; not the Gilmores.

Q. Do you know how they obtained it?

A. Well, no sir, because when I was appointed assessor, all those lands were assessed in the name of the Louisiana Navigation Com-

pany Limited, but they were acquired by Mr. Leovy and J. C. Gilmore acquired them from Mr. Leovy.

Q. Do you know whether the Gilmores are members of the Louisiana Navigation Company?

A. I think they are, yes sir.

Q. Do you know whether they were at the time of the organization of that company?

A. Yes sir.

Q. I believe it is true, is it not, that there was no warranty of title by the State to the levee board or by the levee board to the individuals purchasing this land?

A. Yes sir.

Q. The titles were warranted?

A. No sir, I don't think.

Q. These land- embracing Isle à Pitre, as I understand it, the lands theretofore assessed to the Mee- Gulmore, were assessed on this roll for 1898 to the Louisiana Navigation Company Limited 6312 31 / 100 acres, at a valuation of \$400; the State getting a tax of \$2.40, the levee district \$4.00 and the parish getting \$4.00, aggregating \$10.40 taxes, paid on 6312 31 / 100 acres?

A. Yes sir.

Q. And the same for the year 1899?

A. Yes sir, same assessment.

Q. And Charles Sanger, I see is assessed on this roll in 1899, for 4320 acres of land, in township 11, south range 19, east, at a valuation of \$540, and upon which he paid taxes for the year, to the State, of \$3.24, to the parish, \$5.40, to the levee district, \$5.40, or \$14.04 taxes on the 4320 acres of land?

A. Yes sir.

Q. And the same conditions appear in 1900, as to the assessment and valuations of the Louisiana Navigation Company, Charles Sanger and others?

A. Yes sir.

Q. It appearing on this roll that Mr. Sanger was assessed for this same land with other parties, 4320 acres?

A. Albert L. Hunt, Charles F. Forsyth and John McGraw, they are assessed for the same land.

Q. Are you able to state whether Mr. Sanger executed warranty deeds to these other gentlemen?

A. Yes sir.

Q. They are warranty deeds?

A. No sir. He sold it without warranty; he sold it with the same warranty as the levee board commissioners gave him.

Q. I see from the assessment roll of Saint Bernard parish for the year 1900, 5132 acres, in township 12, south range 18, east, assessed to George W. Dunbar, at \$641.?

A. Yes sir.

Q. Upon which he paid the State, a tax of \$3.84, parish \$6.41 and the levee board \$6.41?

A. Yes sir.

Q. Making \$16.66?

A. Yes sir.

Q. The same as to the year 1901 with reference to the same land?

A. Yes sir.

Q. For the year 1901 I see the lands of the Louisiana Navigation Company, 6332 31/100 acres, is valued at \$200, and the Sanger lands at \$540?

A. Yes sir.

Q. Do you know the cause of the decreased valuations of these lands?

853 A. No. Mr. Gilmore asked for a reduction of assessment for that year. They were assessed at \$400, the Louisiana Navigation Company's lands.

Q. They were reduced to \$200?

A. Yes sir, in that year.

Q. And in 1902 I see the Dunbar land is assessed for \$641, the same as before?

A. Yes sir, always have been the same assessment since they were purchased.

Q. And for the year 1902, I notice that 2432 28/100 acres, assessed to John B. Honor, valued at \$316?

A. Yes sir.

Q. On which he paid to the State, \$1.89, to the parish \$3.16 and to the levee district \$3.16, or a total tax of \$8.21?

A. Yes sir.

Q. Now, the 6332 acres assessed to the Louisiana Navigation Company, in 1902 stood at the assessment of \$200?

A. Yes sir.

Q. I understand these to be extracts from your assessment rolls of particular pieces of land?

A. Yes sir.

Q. What was your criterion in making these particular assessments; I mean these particular transcripts or abstracts of particular property for particular years. Why did you do that?

A. I was asked by Mr. Dymond to do that.

Q. How do these assessments compare with the balance of the valuations in that vicinity?

A. Well, since my appointment in 1897 I have assessed all marsh lands in that vicinity at the rate of 12½ cents per acre.

Q. What is the levy, tax levy?

A. Ten mills.

Q. For all purposes?

A. Yes sir.

854 Q. And these particular pieces of property which you have noted for particular years, are the maximum valuations of lands in that section, are they not?

A. Which ones have you reference to?

Q. These that we have been talking about on this abstract?

A. They are assessed, except the Louisiana Navigation Company I don't think they are assessed at the rate of 12½ cents, all the balance are?

Q. These are assessed at a higher rate?

A. Yes sir, I think they are. Well, they are assessed for the same price they were acquired. They paid 12½ cents, and I have assessed them for the actual cash value they paid.

Q. Do you understand why you were requested to segregate these particular assessments from all others on your rolls?

A. Yes sir.

Q. Why; why did you take these particular pieces of property out of your rolls and—

A. Well, they are in this dispute, in this boundary case, in that boundary line between Louisiana and Mississippi.

Q. That is all you know?

A. Yes sir.

Q. How far is it, in a direct line, from the Saint Bernard courthouse, to the northeast point of Isle à Pitre?

A. How many miles?

Q. Yes?

A. I can't state, I don't know.

Q. Can you approximate it?

A. I am not familiar with that territory; I could not tell.

Q. Have you ever been out in that country?

A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. What is the rate of State taxation?

A. Six mills.

Q. What is the rate of parish taxation?

A. Ten mills.

Q. What is the rate of levee board taxation?

A. Ten mills.

855 Q. Was I correct in understanding you a moment ago, in answer to a question from the counsel for the State of Mississippi, to state that the whole tax paid by any one on these properties, was only ten mills?

A. No sir; 26 mills.

Q. The total tax paid was 26 mills?

A. Yes sir. You have got the acreage tax also, but that does not belong to those marsh lands.

Q. You were asked as to why you picked out particular properties in making out your abstract from your assessment rolls. What did that have to do with this boundary suit and are or are not those properties located in the disputed area?

A. Yes sir, they are.

Q. They are what?

A. They are the properties in the disputed area except John B. Honor, I do not think that is in the disputed territory.

Q. And are those properties taxed by the State of Louisiana as part of the parish of Saint Bernard?

A. Yes sir.

Q. And have they been so taxed as shown by your assessment rolls?

A. Yes sir.

JOHN MCGRAW, witness re-called on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Are you the Mr. McGraw who has previously testified in this case?

A. Yes sir.

Q. Are you the co-owner with Mr. Albert L. Hunt, Charles Forsyth, of property purchased from Mr. Charles Sanger?

A. Yes sir.

Q. Is that property in the disputed area as shown by the map Exhibit A of Mississippi?

A. Yes sir.

Q. Will you please look at this document, which, for purposes of identification we will call Document No. 66, and state whether or not that is your title to the property in question?

A. Yes sir, it is.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, a certified copy of the act of sale before William F. Brewer, a notary public for the parish of Orleans, on January 16th 1900, by Charles Sanger to Albert L. Hunt, Charles F. Forsyth and John McGraw, of the following described property, to-wit: Fractional south half of the northeast quarter and fractional south half of section 15, east half; fractional southeast quarter and fractional east half of northwest quarter of section 21; all of sections 22, 27, and 28 north half of section 33 north half of section 34. Containing three thousand, four hundred and forty acres. And the south half of northwest quarter and southwest quarter of section 23. West half of northwest quarter and west half of section 26. West half of northeast quarter and northwest—of section 35. Containing eight hundred and eighty acres. All situated in township 11, south range 19, east, in the southeastern land district, east of the Mississippi river, and aggregating four thousand, three hundred and twenty acres. Together with the certificate of the said notary thereto, and the clerk of court and *ex-officio* register of conveyances; the

said offer to be marked Document No. 66, and a copy thereof being tendered to counsel for the State of Mississippi.

Q. Have you and your co-owners erected any improvements on this property?

A. Yes sir.

Q. Have you paid taxes on this property?

A. Yes sir.

Q. To whom have you paid taxes?

A. To the sheriff of the parish of Saint Bernard.

Q. In what State?

A. In the State of Louisiana.

Q. What taxes have you paid?

A. We paid the parish tax, State tax and the levee board tax.

Q. Did you ever pay any taxes to the State of Mississippi?

A. No sir.

Q. For this land?

A. No sir.

Q. Were you ever asked by any official of the State of Mississippi to pay taxes on this land?

A. No sir.

Q. Were you ever disturbed in your possession by any official of the State of Mississippi, on the ground that this land was within Mississippi and should have been bought from that State?

A. No sir.

Q. Has your title to this land ever been questioned by any official of the State of Mississippi as being Mississippi land?

A. No sir.

Cross-examination.

By Mr. McCLURG:

Q. How many acres of land are embraced in this deed if you remember?

858 A. I don't remember the exact figures, about 4,000 acres.

Q. How much of that is covered with water?

A. At times?

Q. At the usual mean tide?

A. I could not answer correctly; I do not know.

Q. The greater portion of it?

A. Yes sir; it is all subject to flood tide, every inch of it.

Q. And this is the same land about which you testified the other day?

A. Yes sir.

Q. And that you bought it for oyster planting?

A. Yes sir.

Q. Not for agricultural purposes or for horticultural purposes?

A. No sir; it could not be used for agriculture because it is subject to tide water.

J. C. GILMORE, witness recalled on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND:

Q. Are you a stock-holder in the Louisiana Navigation Company Limited?

A. Well, the company is in a state of escrow on account of the inability or impossibility of developing its territory owing to it being subject to the raids of fishermen and boatmen taking shells, shell products, and quantities of shells from the property and the insecurity of investment of capital to promote the development of the natural resources of the property.

Q. Was there ever a company organized called the Louisiana Navigation Company Limited?

A. Yes sir.

Q. Was it chartered?

A. Yes sir.

859 Q. Did you appear as a stockholder therein?

A. I think so; I can't remember now.

Q. Did you ever make a sale of your property to that company?

A. Well, there was no one interested, practically, in the company except my family, my immediate family.

Q. According to the assessment rolls of the parish of Saint Bernard, that property is assessed as belonging to the Louisiana Navigation Company Limited; how did that company acquire that property?

A. That is property which I, or my brother William V. Gilmore, as the names would appear on the titles, acquired from the State of Louisiana. And also, I acquired Isle à Pitre myself from Mr. Henry J. Leovy who was a distinguished lawyer and published a history of our bar, and he had held it since about 1867 and it was transferred to him or purchased from his brother-in-law Richard Pindell who was the brother-in-law of Henry Clay also, he said.

Q. Have you been paying and has the Louisiana Navigation Company Limited been paying taxes on this property?

A. We had, in so far as we could, all our titles recorded, and they are subject to assessment and we paid whatever the assessment may have been made.

Q. To whom did you pay the taxes?

A. To the officials of the parish of Saint Bernard.

Q. To what State?

A. In the State of Louisiana.

Q. What taxes did you pay?

A. We paid the State and parish taxes, whatever they were. We paid the levee tax too, but we did not think we were subject to the levee tax because we were isolated, in fact our property was called islands, and we did not see how we should pay levee tax, but still

we had to carry the burdens rather than the annoyance of making a test suit.

860 Q. Have you paid the taxes?

A. Yes sir, we paid all the taxes.

Q. To the State of Louisiana?

A. Yes sir.

Q. Every year?

A. Yes sir.

Q. Have you ever been called on by the State of Mississippi to pay any taxes on this property?

A. No, sir, never was such a case in the remotest way suggested.

Q. Has your title to this property ever been questioned by the State of Mississippi in the ground that the property was in the State of Mississippi?

A. It never has been questioned, no sir.

Q. Will you please look at this map which, for purposes of identification will be called map 53, and state from whom you acquired that?

A. This map?

Q. Yes.

A. My impression is it came from Mr. Leovy in connection with the negotiations to buy his property.

Q. What Leovy do you mean; Mr. Henry J. Leovy from whom you bought Isle à Pitre?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now, offer, produce and file in evidence, the said original map to be marked map No. 53, with the understanding that a blue print thereof will be furnished to the witness and to counsel for the State of Mississippi.

Cross-examination.

861 By Mr. McCLURG:

Q. This is the same land about which you testified the other day?

A. Part of it is the same; we have a much larger area. Here is a tracing map denoting the extent of our area.

Q. How much land do you own in that vicinity altogether?

A. I think, 6,000 acres, more or less, as it lies, land and water.

Q. The greater portion of it is covered with water?

A. No; I think the greater portion of it is good firm soil, shell land.

Q. Shell bank?

A. Yes sir. I went there with a lugger man from Bastian bay, the great oyster country of Bayou Cook, who was afterwards drowned in a storm down there in 1900, and he said this is high land, Isle à Pitre, much higher than Bayou Cook, you can garden there.

- Q. You bought it with the object of finding phosphate there?
- A. Some mineral deposit and the quantity of shell all broken
- Q. It is skirted with a broad deep shell bank, is it not, nearly all round Isle à Pitre?
- A. Yes sir, we thought that it might be developed with oranges.
- Q. Did you ever plant any oranges?
- A. No sir, but I could see from the soil that if it was leveed it could do very well.
- Q. I thought you said that leveeing wouldn't do much good?
- A. Leveeing, draining and filling in.
- Q. There has not been any actual adverse possession by you of
- is property?
- A. Yes sir, we have assumed the same civil possession as we have any other property that belongs to us that is not fenced in or improved.
- Q. It is not fenced in or improved?
- A. No sir.
- Q. Nor is there any cultivation of anything upon that
- land?
- A. No sir.
- Q. Or upon any of that land?
- A. No sir, except we have planted oysters there.
- Q. There is no kind of physical or industrial life on the surface anywhere?
- A. We have inspected there for mineral deposits and I thought was a good place to experiment for oil wells; there is a mound there and—
- Q. But there is no physical demonstration of actual adverse possession of it, is there?
- A. Yes sir, we have been there and asserted our ownership, put signs and advertised it in the Mississippi papers.
- Q. That is evidence of ownership, I am talking about evidence of possession?
- A. Living on it?
- Q. Yes?
- A. There used to be a man camping there.
- Q. Fisherman?
- A. I don't know what he was; he had a camp there.

Redirect examination.

By Mr. DYMOND:

- Q. You said you put up signs?
- A. Yes sir, signs "No trespassing, private property" that is not the ordinary hunting which we never interfered with.

By Mr. ZACHARIE :

Q. Did this fisherman camp there by your instructions ?

A. No sir, but I understand that he lived on that land where there were some thick trees.

Q. Since you owned the property ?

A. No sir, before.

863 By Mr. DYMOND :

Q. What sort of notice did you publish in the Mississippi newspapers ?

A. A notice that Isle à Pitre was not a public oyster territory, but was the property of Gilmore Brothers, and that boats were notified not to take away cargoes of shells from there deposits of shells from the shell deposit on the island or cargoes of oysters. But there was no objection to the ordinary hunting and fishing of the public.

Q. Where were these publications made ?

A. In the Pass Christian Beacon.

Q. In any other paper in Mississippi ?

A. I think we published it once before, but I have forgotten the paper, in the Biloxi Herald.

Q. How long ago was that ?

A. I am under the impression that we put a notice in the Biloxi paper but this Pass Christian notice was about two years ago.

Recross-examination.

By Mr. McCLURG :

Q. Why did you find it necessary to make those publications in Mississippi ?

A. Because the island is so convenient to the shore of Mississippi that very few, if any, Louisiana boats come there for oysters, as far as I know, they only take shells from there, I should think, the Louisiana boats, and they can't take very many tons of shells from there as the capacity is necessarily limited and the haul is too long ; but Mississippi is quite adjacent, it is just about 11 miles, I think, in a direct line to Pass Christian, and all the shells that are used on the walks there, sidewalks and garden walks, are brought from this Louisiana shore, and those shells from Isle à Pitre are particularly acceptable they have a pinkish tint or shade and are more sought after.

864 Q. Mississippians have been taking oysters and shells from that vicinity before ?

A. Yes sir.

Q. For how long, do you know, for how many years ?

A. Since we have owned it ; I don't know how long before ; Mr. Leovy told me he had bought it for the shell deposit.

Q. I believe you stated the other day that your titles to that land did not have the usual warranty—

A. They are the ordinary warranty sale; the acts contain warranty—I could show you one of them, if you want. He was very much grieved to sell it to me he had held it so long. He had other large shell deposits back at Fort St. Philip and he wished to cultivate oranges there and being a little short of money for that purpose he sold this to us at this price.

Q. That was like a visionary idea, rather problematical?

A. All these things are in a measure visionary when they begin.

At this stage of the proceedings, the commissioner adjourned the hearing for recess, to be resumed at the hour of 2.15 p. m. at the same place and date.

2.15 P. M.

Pursuant to adjournment the hearing was resumed at the hour of 2.15 p. m. at the same place and date. All parties present.

Lieut. Governor ALBERT ESTOPINAL, witness, recalled on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. I desire you to note this map of the parish of Saint Bernard and state what official connection you had with its authorization and compilation?

A. I was the president of the police jury at the time this map was made and there is my signature as president of that body attached to the map.

Q. Was that or was that not for the purpose of showing your approval of the map as made?

A. My signature?

Q. Yes.

A. Yes sir.

Q. Was this map made by authority of the police jury of the parish of Saint Bernard?

A. Yes sir.

Q. What was the purpose of making the map?

A. The purpose of making the map was to establish the limits of the parish and show the lands that belonged to the parish.

Mr. DYMOND: Counsel for the State of Louisiana now desires to state that the witness is shown map known as map No. 52, so that the same may be identified.

Q. Had there been any prior official map of the parish of Saint Bernard, so far as you know?

A. No sir.

Q. What had become of any pre-existing maps, if there were any?

A. There were a few fragments of maps, I call them fragments

because they were not whole maps in the clerk's office, and that were referred to whenever lands wanted to be described, and there were some fragments of maps, but none of them were complete.

866 Q. Was there any official map prior to the burning of the courthouse of Saint Bernard in 1883?

A. I don't remember.

Q. What became of the fragmentary maps you refer to?

A. I believe they were consumed by the fire in the burning down of the courthouse in 1884.

Q. Will you please note the limits of the parish of Saint Bernard as shown by this map and state whether you know of any adverse possession ever having been urged by the State of Mississippi or any official of the State of Mississippi to any of the property or territory shown by this map, other than the recent dispute which is now at issue in this case?

A. No sir; I know of no contention on the part of Mississippi and never heard of any contention on the part of Mississippi to the claim—of any claim to this territory by the State of Mississippi.

Q. What has this territory in the southeastern portion of the parish of Saint Bernard always been accredited as?

A. As part of the parish of Saint Bernard, in the State of Louisiana.

Q. When was the first time that you ever heard that there was any contest as to the title or ownership or control of the Louisiana marshes not being in the parish of Saint Bernard?

A. At the time that a conference was held with Mr. Neville who was district attorney for a judicial district in Mississippi, and it was about the year 1900 or 1898, I don't remember exactly, but the parish of Saint Bernard attempted to drive away Mississippians, or, rather, notified them to keep off the Louisiana marshes where they were fishing oysters and they refused to leave, whereupon there was a conference with Mr. Neville who represented, as district attorney, that portion of Mississippi, I believe including Biloxi and Pass Christian.

867 Q. Had you ever previously heard any claim by the State of Mississippi to ownership of this territory or any part of it?

A. No sir, never, never before.

Cross-examination.

By Mr. McCLURG:

Q. It is true, is it not, Governor, that prior to the time that the authorities of Saint Bernard undertook to drive the Mississippians out of that territory, that District Attorney Neville protested that they had been fishing and taking oysters in the disputed territory for many years?

A. Yes sir.

Q. And there had been no controversy about it until up to the

that Louisiana undertook to exercise exclusive ownership by driving the Mississippians out.

Q. Yes sir. There had been no dispute about it? Louisiana had never asserted her right up to that time, until she knew or the authorities knew, that Mississippians and Alabamians were dredging on the oyster region in Louisiana territory.

Q. That is, according to Louisiana's construction of it?

A. Yes sir, of course.

Q. Now, I think you made an unguarded answer to one of Mr. Dyson's questions, awhile ago, when you said it had always been regarded as Louisiana territory. I presume you meant to say, as far as our information went?

A. As far as I can remember it had always been regarded as Louisiana territory. I meant what I said.

Q. This map was made when you were president of the police?

A. Yes sir.

Q. It was approved by that board as correct?

A. Yes sir.

Q. I notice here in the disputed territory, Governor, Half Moon island, just east of the mouth of Pearl river, is marked 31 and 32, which I judge from this map to indicate sections of land and I understand by this map that this is claimed to be within the Louisiana territory?

A. Yes sir.

Q. And I see to the northwest of that island and unnamed island; Louisiana claims that also?

A. Yes sir.

Q. And to the southwest between that and Petite Bois is another unnamed island; that Louisiana claims?

A. I don't know of the island, I know nothing of Petite Bois—

Q. Petite Bois island Louisiana claims that?

A. Yes sir.

Q. That is marked as clearly and distinct an island as well as an unnamed island?

A. It is an island.

Q. I don't see it named here, but we have been calling it Malreaux point. Nevertheless that point is separated from a portion of the marshland just south of the Bayou Pointfilou which cuts off that point entirely from any other land. That is true, as you observe it from this map?

A. According to the map, yes sir. I don't know about the topography of the country.

Q. That part of the map which is marked township 11, range 17, is shown on this map as an island, is it not?

A. Yes sir.

Q. Now, I notice also, that by Nine Mile bayou, around some other water outlets into the Mississippi sound, from Bay Boudreaux, that there are other islands there. I don't see Three Mile bayou marked east of Nine Mile bayou, but the land just east

of Nine Mile bayou, to these water courses of which I spoke, shows an island in there. In other words you can go down Nine Mile bayou and then into Bay Boudreaux and then north again into the sound, in a water craft?

A. I presume so; I never navigated those waters.

Q. Are you familiar with that coast?

A. Not at all.

Q. I beg your pardon; I though- you were?

A. No sir; the map shows for itself; I suppose it is correct.

Q. I though- if you had personal knowledge—

A. No sir, I never have been, I never saw the country—

Q. At all events if this map shows a string of islands from Malheureux point to the northeast point of Isle à Pitre, you think it is correct?

A. The map is a correct one, yes sir.

Q. Now, these fragments from which the map was made I understand you to say have been destroyed?

A. Yes sir.

Q. When did your courthouse burn—

A. I think they referred in part to these maps, I do not think this map was constructed entirely from those fragments that I refer to, but in part they were referred to by the makers of this map.

Q. Have you any idea how far it is from the Saint Bernard courthouse up here to the northeast point of Isle à Pitre?

A. No sir.

Redirect examination.

By Mr. ZACHARIE:

Q. What time did you state, on your former examination, that you were sheriff of the parish of Saint Bernard?

A. I say, in 1873, '74, '75 and '76.

Q. Do you remember, if, during those years, complaints
870 were made to you and the authorities of the parish of Plaquemines about Mississippians fishing in those waters, if so by whom and what were the complaints?

A. Yes sir; frequent complaints were made.

Q. By whom?

A. I know of two persons distinctly and many others I don't remember now. Captain Ruiz who testified before this court and Doctor Albrecht who owned the property near the gulf of Mexico on Bayou La Loutre, he is dead now, his family owned property there and they made complaint frequently of the incursions of these boats into Louisiana waters.

Q. Then what was done about those complaints made to you?

A. Nothing could be done as there was no statute prohibiting any citizen of the United States from fishing in those waters.

Q. Was it referred to anybody, to any official body in your parish?

A. It was referred to the police jury, but they were powerless to act.

Q. Then when you say there was no dispute, you heard of no dispute up to the time that the conference was held with Mr. Neville, you mean——

A. I mean there was no contention on the part of—or any claim on the part of Mississippi or any notice to Louisiana that Mississippi had any ownership of this territory. Mr. Neville did not say he claimed or that Mississippi claimed ownership but simply said that they thought they had the right to fish there as they had been fishing there for many years and — never interfered with.

Q. Then there was or was not some friction between the property holders in the parish of Saint Bernard and these Mississippi fishermen?

A. Yes sir. I understand there was with some of the owners of property near the gulf of Mexico, I believe, the Gilmores.

By Mr. McCLURG:

Q. That is hearsay with you?

A. Yes sir. There was no complaint ever made to me about it but these gentlemen are property owners down there, the Gilmores. But I know they complained of depredations on the part of the Mississippians and aliens.

By Mr. ZACHARIE:

Q. Then when you testified on cross-examination you never heard of any controversy, did you allude to any official controversy or an unofficial controversy?

A. To an official controversy.

LEWIS FRITCH, recalled, on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Are you the same Lewis Fritch who testified in this case as a witness the other day, to the effect that you were in the employ of the Romanski Photo-engraving Company, and had the making of certain negatives which were used in this case in reproducing certain maps?

A. Yes sir.

Q. Will you now, please, look at the photo print of map No. 52, and state whether the negatives from which this map was printed were made by you?

A. Yes sir; they were.

Q. From what map were they made?

A. They were made from the map right in front of me, this is the map.

Q. Made from map No. 52 of the parish of Saint Bernard?

872 A. Yes sir.

Q. Were your negatives correct reproductions of the map?

A. Yes sir.

Q. Did you compare the negatives after you had made them with the map from which you were making the photographs?

A. Yes sir.

Q. As a result of that comparison, did you find, or did you not find, that the photographic reproductions were as correct as it was possible to make photographic reproductions?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. I notice on the photographic copy, deep markings by Lake Eugenie, and to the northward and to the eastward. Do you not find this disparagement in the colors on the original map that you photographed than you find on this photographic map?

A. Yes sir.

Q. You notice the same difference as to Isle à Pitre color, you find a difference in the coloring, don't you?

A. Yes sir.

Q. The shading in the disputed territory is heavier than it is in the other portions of the map, is it not?

A. Yes sir.

Q. How do you account for that?

A. That is accounted for by the color of the map and being a very big copy. It is the best we could do with it, in reproducing.

Q. Have you any personal knowledge of this territory?

A. No sir; none whatever.

873 OSCAR HOOPES, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. 123 South Roman street.

Q. In the city of New Orleans?

A. Yes sir.

Q. Where are you employed?

A. At Eugene Dietzgen Company 145 Baronne street.

Q. What business is that company engaged in?

A. In drawing materials and reproducing prints.

Q. Do they have a blue printing plant there ?

A. Yes sir.

Q. Did you have delivered to you any negatives by the Romanski Photo-engraving Company, for the purpose of printing therefrom ?

A. Yes sir.

Q. Will you please look at this photographic map No. 52 and state whether that was printed by you from the negatives received by you from the Romanski Photo-engraving Company ?

A. Sure ; these are the prints that we reproduced ?

Q. Was that carefully and properly done in reproducing from the negatives ?

A. Yes sir ; they were made over several times to get what we did.

Cross-examination.

By Mr. McCLURG :

Q. You did not do the photographing of the map ?

A. No sir.

Q. Nor the making of the plates from that photograph ?

A. No sir ; that is the photographer makes the plates ; if you make a photograph of the map you make the plates.

874 Q. The map is photographed onto the plates ?

A. Yes sir, the map was photographed on to the plates but not by us.

Q. You never compared the work that you had to do, with the original map ?

A. No sir. We had nothing to do with that whatever ?

MR. DYMOND : In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said photograph copy of map No. 52, being the official map of the parish of Saint Bernard, Louisiana, with notification to counsel for the State of Mississippi that the original map will be produced before the Supreme Court of the United States in the trial of this case ; but owing to the official map being the property of the parish of Saint Bernard, that it could not be offered in evidence ; and counsel now tenders to counsel for the State of Mississippi a copy of said photographic map No. 52.

E. E. NUNAK, witness, re-called, on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND :

Q. As sheriff of the parish of Saint Bernard, are you, or are you not also the official tax collector of that parish ?

875 A. Yes sir. I am sheriff and *ex-officio* tax collector of the parish.

Q. What taxes do you collect?

A. State, levee, parish and acreage taxes and all licenses.

Q. When you speak of State tax, is that tax levied by the State of Louisiana?

A. Yes sir.

Q. And when you speak of parish tax, by what parish is that tax levied?

A. Parish of Saint Bernard.

Q. And when you speak of levee tax, by what body is that levied?

A. By the levee board, Lake Borgne levee board.

Q. What parish comprises the Lake Borgne Basin levee district?

A. Saint Bernard and part of the parish of Plaquemines.

Q. There has been testimony this morning to the effect that certain properties in the name of J. C. Gilmore and W. V. Gilmore, the Louisiana Navigation Company, Ltd., George H. Dunbar, Charles Sanger, John McGraw, Albert L. Hunt, Charles F. Forsyth, Lazaro Lopez and W. K. M. Dukate, were assessed for taxes. Did you, as tax collector of the parish of Saint Bernard and *ex-officio* tax collector for the State of Louisiana in that parish, ever collect any taxes on these properties?

A. Yes sir.

Q. Have you collected the taxes as shown by the assessment rolls?

A. Yes sir, just exactly as shown by the assessment rolls.

Q. Beginning with the year 1889 and extending down to the year 1903, inclusive?

A. Yes sir.

Q. Did you, or did you not, ever receive from the State of Mississippi, or any officials of said State, any notification that this property should not be taxed by the State of Louisiana because it belonged to the State of Mississippi?

A. I never did.

Q. Have you ever heard of the State of Mississippi ever endeavoring to collect any taxes on any of the property assessed by the State of Louisiana and set forth in Document No. 65 being an extract from the assessment rolls of the parish of Saint Bernard, State of Louisiana?

A. Not to my knowledge.

Cross-examination.

By Mr. McCLURG:

Q. Did you ever collect any taxes on lands in Half Moon island?

A. I don't know that it is described, that it is mentioned as Half Moon island. I collect as it is described on the assessment roll.

Q. You collected, I believe, taxes only upon lands claimed by individuals?

. I collected taxes on all lands assessed in our parish on our assessment roll.

Q. And the levee taxes are not assessed, are they?

A. Yes sir, they are imposed.

Q. I mean to say that the lands belonging to the Lake Borgne and Lake Basin board, are not taxable?

A. No sir; they are not assessed. Property is assessed and the tax is levied on the assessment.

Q. You have no independent recollection of having collected taxes upon the lands in Half Moon island?

A. I have no recollection, no sir.

Q. Have you any recollection of having collected taxes on Petite Anse island?

A. No, sir, I have no recollection of collecting—of course I would refer to refer back to my assessment rolls.

Q. I think the assessment rolls will speak for themselves, and I want to get your independent recollection. Have you been testifying from your assessment rolls when you say you collected taxes from Lopez and Dukate?

A. Yes sir.

Q. You have no independent recollection of that?

A. From what, I don't understand?

Q. You stated a while ago that you had collected taxes from Lopez and Dukate and the Gilmores and others?

A. Yes sir.

Q. Do you state that as an independent recollection or from the assessment rolls?

A. From the assessment rolls.

Q. You have no independent recollection of it?

A. Because I looked over it a few days ago. I took the names of the persons who paid me taxes on that land.

Q. Have you any recollection of having collected or who paid taxes on the lands at Malheureux point?

A. Yes sir. The lands are not described by names in our assessment roll, they are described by section and quarter section, in township so and so, it mentions no names that I remember.

Q. You have no independent recollection then of collecting any taxes on any lands from Malheureux point to Grand pass?

A. By name I have no recollection. I have certainly collected taxes from those marsh lands back there, but they have not been assessed by the names, they are assessed by section and quarter section etc. township.

Q. When did you first begin to collect these taxes?

A. I think in 1889. I found out—

Q. I mean that you—

A. I collected taxes before, but I have no books to show what I collected.

Q. You were collecting in 1889?

A. In 1880; but in 1889 was the first time I collected any tax
878 that I remember; I don't find the records of those back years.
I know the property of Gilmore in 1888 belonged to the Gil-
mores, I know that of my personal knowledge but they were not
assessed.

Q. Don't you mean to say that you know they claimed it?

A. They claimed it. I put it down myself in lead pencil on my
assessment roll in 1888, but didn't collect any tax from them.

Redirect examination.

By Mr. DYMOND:

Q. You stated a moment ago, if I understand you correctly, in
answer to the question of counsel for the State of Mississippi, that
you have no independent recollection except by refreshing your
memory by your records, as to anybody's paying any of these taxes.
Is that correct?

A. I may have misunderstood him. I certainly recollect very
well that I collected taxes from Mr. Gilmore, from Mr. Sanger and
Lopez and Dukate, Mr. Dunbar, and Mr. McGraw, Mr. McGraw pays
me taxes for the Sangers and Company. I know one of the Gil-
mores intimately, I meet him in the streets, he sends me checks;
Lopez and Dukate, yes, I have recollection that they paid me taxes,
of course.

Q. Do you know of your own knowledge—

A. I misunderstood the gentleman. I thought he meant to say if
I had any recollection of the piece of property, description of the
property. That you can't have any recollection of, but you can of
the names of the parties who pays the taxes.

Q. You have been living in the parish of Saint Bernard how long?

879 A. Since I was born, I was born in the parish of Saint Bernard

Q. How old a man are you?

A. I was born in 1846.

Q. Have you ever heard of anybody from the State of Mississippi
claiming that any of those Louisiana marshes belonged to the State
of Mississippi from your boyhood up until the time you met Judge
Neville in 1898?

A. I never did.

Q. Did Judge Neville claim then, that those lands belonged to
Mississippi, or not?

A. He did not really claimed they belonged to Mississippi but he
thought so.

Q. What did he say.

A. He said he wanted to have a conference with us to try and fix
the matter amicably, because he was afraid there might be trouble
between the Mississippians and Louisianians fishing out there.

Q. Now understand this question. Did Judge Neville claim the
right on the part of the Mississippian fishermen to fish there be-
cause Mississippi owned part of the Louisiana marshes, or was it be-

cause the Mississippi fishermen had been fishing there for a number of years and he thought they ought to be allowed to continue fishing there?

A. That was his reason, because they had been fishing there.

Mr. McCLURG: The State of Mississippi reserves an exception to the leading character of these questions.

At this stage of the proceedings the hearing was adjourned by the commissioner, to be resumed on the 29th day of April 1904, at the hour of 10.30 a. m. and at the same place.

880 Resumption of Proceedings.

NEW ORLEANS, April 29, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed, at the hour of 10.30 a. m. and at the same place.

Present: Hon. Frank H. Mortimer, commissioner.

Present: Hon. Walter Guion, att'y gen. State of Louisiana.

Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

GEORGE H. DUNBAR, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. I believe that you are the same gentleman engaged in the oyster canning business who was on the stand as a witness in this case the other day?

A. Yes sir.

Q. Do you own any land in the disputed area in this case?

A. I do.

Q. From whom did you acquire that land?

A. From the State of Louisiana or levee board, I believe, I have my titles here. (Witness looks at his titles.) I bought that from the commissioners of the Lake Borgne Basin Levee district.

881 Q. Of what State is that levee district or levee board a part?

A. Of the State of Louisiana.

Q. In what territorial sub-division of the State of Louisiana is this land situated?

A. In the parish of Saint Bernard.

Q. Will you please look at this document which is marked Document No. 58, and state whether you recognize it as being a copy of your title to the lands which you purchased as you have just testified?

A. Yes sir. This agrees with my title, as well as I can get going through it pretty fast.

Q. When you purchased that land did you visit it?

A. I did not visit it before I purchased it, that is, right in the immediate place, but I had been there.

Q. Have you been there since you purchased it?

A. Yes sir; several times.

Q. Have you any oyster bedding grounds located any where near it?

A. Well, near Raccoon island at Pirate point, yes sir, I have oyster grounds located.

Q. Have you any intention of doing anything in regard to improvements at that point and if so what?

A. When I purchased it?

Q. Now, I mean?

A. Yes sir; I have.

Q. What do you propose to do?

A. I am going to build there next week on Raccoon island.

Q. What are you going to build?

A. I am going to build a house, a residence, where I propose to try and get a family to locate there and take charge of those oyster beds that we have leased from the State, from the oyster commission.

Q. Have you ever paid taxes on this property?

882 A. I have paid right up to the present year.

Q. Regularly since you purchased it?

A. Yes sir.

Q. To whom have you paid your taxes?

A. To the sheriff I think Mr. Nunez.

Q. Of what parish and State?

A. Parish of Saint Bernard and State of Louisiana.

Q. Have you ever paid any taxes to the State of Mississippi?

A. I never have.

Q. On this land?

A. No sir.

Q. Have you ever had any claim made by any of the officials or tax collectors of the State of Mississippi, asking that you should pay to that State taxes on these lands?

A. No sir, never have.

Q. Have you ever had your title to these lands questioned by any official of the State of Mississippi on the ground that they were in Mississippi and should have been purchased from that State?

A. No sir; never have.

Q. Have you ever been disturbed in your possession in any way of these lands by any officials of the State of Mississippi?

A. Not in the least, no.

Q. Have you leased oyster bedding grounds from the State of Louisiana, through the Oyster Commission of Louisiana?

A. Yes sir.

Q. Are those oyster bedding grounds in waters within this disputed area as contended by Mississippi?

A. Yes sir.

Q. Are these lands which you have purchased in the disputed area?

A. Yes sir.

Q. Have you any maps of these lands, Mr. Dunbar, which you purchased from the board of commissioners for the Lake Borgne Basin Levee district?

A. Yes sir.

883 Q. Are these the maps which you refer to and which you now produce?

A. Yes sir, these are the maps.

Q. From whom did you acquire those maps?

A. From, I suppose the Lake Borgne—

Q. From the board of commissioners of the Lake Borgne Basin Levee district?

A. Yes sir.

Q. Did they accompany your title at the time you got the title?

A. They did.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said original maps to be numbered maps 54 and 55, and inasmuch as the said maps have just been obtained, counsel would ask of the counsel of the State of Mississippi his consent to give the counsel for Louisiana an opportunity to have the said maps blue printed and copies thereof properly colored furnished to the State of Mississippi.

Mr. McCLURG: That will be satisfactory.

Q. Will you please look at map No. 54 and you will notice certain colored lined, one set of colors being in red, another in yellow, and the third in blue. Will you please state what those colored lines indicate?

A. The yellow lines indicate my holdings.

Q. Do those colored yellow lines surround and outline the lands that you own in that locality?

A. They do.

884 Q. What do the red lines just to the left of your yellow lines indicate?

A. From the best of my knowledge they are the possessions of Mr. John McGraw.

Q. Is that the locality where Mr. John McGraw has his house erected at the mouth of Turkey bayou or Bayou Johnson?

A. Bayou Johnson, I suppose this is Bayou Johnson marked Jones bayou.

Q. What do the blue lines indicate as the property of, on the right or eastern part of said map?

A. To the best of my knowledge, I always understood they belonged to Mr. Gilmore, I think Joseph C. Gilmore.

Q. Will you please look at this map No. 55, and state what the yellow lines surrounding Preachers island, indicate?

A. My holdings.

Cross-examination.

By Mr. McCLURG:

Q. I notice that the date of your deed is June 1899?

A. Yes sir.

Q. That is the correct date of your purchase?

A. Yes sir, that is the date I see here, I think it is the 17th of June, 1899.

Q. That you bought from the Lake Borgne Basin Levee District commissioners, 5122 24 / 100 acres?

A. Yes sir.

Q. For which you paid 12½ cents per acre or \$641.53?

A. Yes sir.

Q. I read from the deed as follows:—"It is understood that the board of commissioners transfer only such title as it acquired from the State of Louisiana under its charter, and the aforesaid deeds of transfer." You have no other warranty of title except what is contained in this clause?

A. That is all.

Q. Is it not true save as to the Isle à Pitre, purchased; that the purchase of land in this disputed territory is of comparative recent date?

A. My purchase is, but I could not answer beyond lands purchased by myself.

Q. Don't you know, as a matter of fact, that Mr. McGraw's is a recent purchase?

A. Ahead of mine I know, may be not very long, possibly a couple of years.

Q. These purchases, except the Gilmores and the Isle à Pitre, land; have been generally within the last ten years. have they not?

A. I could not say, I can't answer that, I don't know.

Q. What sort of a house is it you expect to put out there; have you made your plans yet?

A. Yes sir, I have made my plans.

Q. What kind of improvements do you propose to make?

A. Well, it is a two room house upon piling.

Q. What material do you propose to make it of?

A. Well, wood, wooden piers and galvanized roof?

Q. To be occupied by your tenant or manager?

A. Exactly, by my manager.

Q. You are not much afraid of its destruction by storm or the subsidence out there, are you?

A. Those are chances we have to take you know. Well, of course

you know, in cases like that, there are always boats and these fellows generally manage to get out of the way.

Q. You own the most of the water front between Jones bayou, rather the east branch of Jones bayou, to Grand pass?

A. Yes sir.

Q. And eastward from Grand pass to Isle à Pitre?

A. Northeast.

Q. Northeast from Grand pass to Isle à Pitre?

A. Yes sir, northeast.

Q. When you go to your possessions at Preachers island, in that neighborhood, how do you travel?

A. Either through Nine Mile bayou or Three Mile bayou either one.

886 Q. Into Bay Boudreaux?

A. Bay Boudreaux, yes.

Q. Then around by Nigger point—

A. That is Pirate point.

Q. How do you go?

A. Go through Nine Mile bayou, go right on through Nine Mile bayou down through the pass here and up in here. I go through Nine Mile bayou to the southward, then in a southeasterly direction to Point Pirate and then east to Raccoon island or Preachers island.

Q. If you should go through Three Mile bayou, what is your route?

A. Direct south.

Q. Into what?

A. Into Bay Boudreaux; then to Preachers island.

Q. You say the oyster beds are rich in that vicinity? Preachers island?

A. Well, there are some few natural reefs.

Q. How are they around Raccoon island?

A. There are a few small reefs in the neighborhood of Raccoon island.

Q. How are the oysters on your possessions between Jones bayou and Grand pass, on to the southward?

A. From my knowledge, I cannot tell you.

Q. There are oysters in that territory?

A. Yes sir, from what I understand, quantities of them.

Q. You spoke of never having been called upon by the Mississippi authorities for taxes, nor had your ownership of this land been disturbed by Mississippians?

A. Yes sir.

Q. You never made any inquiry of ant official of that State as to any claim they might have had to this land when you went to make your purchase?

A. I did not.

Q. And there has been no visible occupation of this land since you purchased it?

887 A. No sir.

Q. Nor before, that you know of?

A. No sir.

Q. There has been no animal or industrial life on it?

A. Nothing at all.

GEORGE W. NOTT, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. 807 Esplanade street in this city.

Q. Are you a resident of the State of Louisiana?

A. Yes sir.

Q. Born and raised here?

A. Yes sir.

Q. What is your present profession?

A. I am president of the Citizens Bank of Louisiana.

Q. How old a man are you?

A. I am sixty years old.

Q. Have you been living in Louisiana all your life?

A. Yes sir.

Q. Were you here before the war?

A. Yes sir.

Q. Did you know a gentleman by the name of William H. Wilder?

A. Yes sir.

Q. What was his business?

A. I think he was a surveyor.

Q. Do you know whether he was ever in the employ as a surveyor of Gen. Ben. Butler of the United States Army?

A. No sir, I do not.

Q. Will you please look at this map which is called map No. 49, and state whether it was ever in your possession?

888 A. Yes sir.

Q. From whom did you get it?

A. From Mr. Wilder who gave it to me as a present.

Q. Was that the William H. Wilder concerning whom you have testified just now?

A. Yes sir.

Q. Where is Mr. Wilder now?

A. He is dead.

Q. Did Mr. Wilder ever state to you the circumstances under which this map was prepared by him?

A. Yes sir.

Q. What did he state to be the circumstances under which he prepared it?

A. He told me that the map had been made, or the original, I think this is a copy, that the original had been made under instructions of General Butler while occupying the city of New Orleans during the war.

Q. What Butler was that?

A. Benjamin F. Butler.

Q. Do you know whether or not a tracing was ever made of this map?

A. Yes sir.

Q. In whose possession would that tracing most likely be now?

A. In Sully's, the architect.

Q. What Sully is that, Thomas Sully?

A. Yes sir.

Q. What was the purpose in your obtaining this map; did you, or the Citizens bank, own any property in Saint Bernard parish?

A. No sir. I think I was looking for certain hunting grounds, and he told me he had a map that had been made under Butler and he had a copy of it and would bring it to me, and after the war he gave it to me.

By Judge GUION:

Q. Did the Citizens bank hold any mortgages on any of this property out here in this territory represented on this map?

A. No sir; they had some below.

By Mr. DYMOND:

Q. To whom does this map at present belong?

889 A. I gave it to Mr. Andrieu, the real estate man.

Q. Do you think he would be willing to give it to us for use in the record?

A. I have no doubt if you asked him he would do it; he could get it back again couldn't he?

Q. No.

A. You had better try and get a blue print.

No cross-examination.

JOHN DYMOND, JR., witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. You are one of the attorneys representing the State of Louisiana in this case?

A. Yes sir.

Q. What official positions do you hold or occupy in relation to boards or commissions?

A. I am attorney of the Oyster Commission of Louisiana, and

also of the board of commissioners for the Lake Borgne Basin levee district. I am attorney for several other levee districts in the parish of Plaquemines, and if you desire me to give them in detail I will be glad to do so.

Q. It has been noticed that in these deeds from the Lake Borgne Basin levee district, that is the proper name is it not?

A. Board of commissioners for the Lake Borgne Basin levee district.

Q. That there is an exclusion of warranty in these deeds. Will you please state how that exclusion came to be placed, and for what reason, in these various deeds?

A. When the board of commissioners for the Lake Borgne Basin levee district was created, under section 11 of act 14 of 1892, 890 authorizing the creation of that levee district to take charge of the protection of the parish of Saint Bernard and a portion of the parish of Plaquemines, from overflow by the high waters of the Mississippi river, the legislature authorized the register of the State land office to transfer to that levee board all unsold State lands that were within the territorial limits of that district. For the purpose of raising funds with which to construct levees, in carrying out the objects and purposes of the act, I was consulted as the board as its attorney, as to whether or not there should be any warranty clause put in these deeds, and I advised the board not to put any warranty clause in the deeds because as a department of the State government, the board was not in a position to warrant its deeds to these lands, as the proceeds of sale of these lands were used in constructing levees and were therefore converted into other form which would not be available or on hand for meeting any warranty obligations of a contract of sale, and that any purchaser would have relief by applying to the legislature in case there was any difficulty as to warranty and it would be the safest plan and would be less likely to embarrass the board if that policy was proceeded with, and the board acted on my advice.

Q. Now, Mr. Dymond, in connection with that map which was prepared by Mr. Pilie, which has been offered in evidence in this case, state under whose instructions that map was prepared and what was followed in its connection?

A. The maps which are known as diagrams 1, 2, 3 and 5, made part of the original bill of complaint filed in this cause, were originally prepared by Mr. Edgar Pilie under my instructions, the purpose being to attach to the bill of complaint an outline series of maps showing, in a general way, the boundary descriptions of the States of Louisiana and Mississippi. I gave to Mr. Pilie the map of Louisiana by S. H. Lockett and it was from this map he made the map of Louisiana which forms one of the diagrams on the bill of complaint.

891 The map of Mississippi was prepared by Mr. Pilie from a — of Mississippi which he had, and he was requested to pre-

pare these diagrams on the scale shown on the diagrams in accordance with the proportions of the maps which he had used.

By Judge GUION :

Q. In the preparations of these acts of sale from the Lake Borgne levee board, or, rather the board of commissioner- for the Lake Borgne Basin levee district, was the idea uppermost in your mind, or did you consider it at all, at the time, in excluding warranty, that the State of Louisiana had a definitive title to this property ?

A. No sir, no sir. As the attorney of the board I considered that the State of Louisiana had a perfect title to the property, and the idea of there being any uncertainty in the title never at any time affected me in my conclusions or in my advice.

Q. Then, it was an entirely different reason, that you had, than any defect in the title of the State or of the levee board holding from the State, that prompted you in giving the advice you did ?

A. Yes sir.

Cross-examination.

By Mr. McCURD :

Q. Does the act of the legislature, to which you refer, limit the title to a release ; does it prohibit a warranty being given to these lands ?

A. No sir. It vests full authority in the levee board to determine the price and conditions under which the land shall be sold.

Q. It does not undertake to say whether it shall warrant the title or not ?

A. No sir.

Q. And that act was passed when ?

A. In 1892 ; it was act 14 of the legislature of the State of Louisiana for that year.

892 Q. Of course that was before there was any suspicion of this controversy ?

A. Yes sir.

Q. Now this original map from which you made the exhibits to your original bill, I will ask you to look at it, Mr. Dymond, and say whether or not all islands including Half Moon, Shell Bank, Cat and Ship islands, as well as Isle à Pitre and the Chandeleurs, are not indicated by the coloring to belong to the State of Louisiana ?

A. Yes sir. But the idea of ownership is not indicated on this map coloring ; the idea is to show the geological formation and the question of ownership is not shown by that. If you will notice the legend of the map, you will see here that the colors have a special significance different from ownership.

Q. Those islands have the general coloring that the State of Louisiana has, as distinguished from the coloring of Mississippi or the other States on this original map ?

A. Yes sir, in a qualified way, because Louisiana bears many different colors on this map, due to the different geological formations of the particular areas represented by the different colors and the map maker has seen fit to designate these islands as of the same geological formation as the land in the immediate neighborhood of them and has therefore given to them that color.

Q. As a matter of fact the geological formation of Cat island and Ship island and of Marsh island, is not the same as that of Isle à Pitre or the main body of Saint Bernard?

A. No sir, they are different, one is the alluvium of the Mississippi river and the other is the sand of the sea.

Q. But it is not so shown on this map?

A. No sir; I think the map is in error in regard to that.

Q. In indicating the boundary between the two States, on the exhibits filed with your original bill, I wish you would say what islands are north of the red line which indicate your contention for the boundary?

A. In what portion of the line?

893 Q. Beginning at the mouth of Pearl river, going eastward, what islands are north of your red line indication of boundary?

A. The islands are Cat island, Ship island, Horn island, and the west end of Petite Bois, with Deer island lying just off the mouth of Biloxi bay. I want to state, General, in connection with these maps that I expected there would probably be a more detailed map to show the islands when the actual trial of the case came up and that these maps were prepared more with the idea of showing the general trend of the boundary.

Q. How long have you been the attorney for the Lake Borgne Basin levee district?

A. Since its organization.

Q. When was it organized?

A. It was organized, if I recollect correctly, on the first of September 1892, or somewhere in that immediate neighborhood; the original meeting was held at the Slaughter house in the parish of Saint Bernard.

Q. Is it not true that up to that time, not much attention, by the State of Louisiana, had been given to these marsh lands in controversy?

A. I can hardly answer that affirmatively, for the reason that it would be difficult to determine what you consider not much attention. I would say, that in my opinion, there had been considerable attention given to these marsh lands because they had been selected by the State as marsh or swamp or overflowed lands enuring to the State under the provisions of the swamp land act of 1849 they had been approved to the State and listed with the register of the State land office at Baton Rouge and were therefore carried on the books of the State and were decreed by the State to the levee board of which I am the attorney, under the provisions of this act of 1892; but it

was not until 1895 that the transfer to the levee board by the State was actually made in the shape of a deed.

Q. Except as to the Gilmore lands or Isle à Pitre, there had been no large sales of any land by the State of Louisiana within this disputed territory, until after the organization of the levee board?

A. No sir; there had not. I might in explanation of my answer to that question, say, that the development of the oyster industry has gone through a sort of evolution in this State as well it has in the State of Mississippi, and that it is with the development of this oyster industry that this area and the adjacent lands have increased in value and more attention has been paid to them.

Q. Do you know when the selection of these lands under the act of Congress of 1849, was made by this State?

A. Of my own knowledge I do not; but I think we can show in the records, perhaps from document Exhibit G which is on file in this case, the date, I think it may be furnished there.

Q. Have you any independent recollection as to about the date?

A. I cannot say, off hand; it would be entirely a question of guess as to about 1855, somewhere in that neighborhood.

Q. And was subsequently approved by the Secretary of the Interior.

A. Yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. At what date were the Pindell grants from the State and the Leovy grants—

A. In 1867.

Q. Both of them?

A. There were two Pindell patents that were granted at that time.

Q. Well, in regard to Leovy?

A. Leovy subsequently acquired from Pindell and I think

5 Mr. Leovy also subsequently got a patent direct from the State some years afterward for other lands in that general locality.

Q. What other patents, prior to the date named by counsel for Mississippi, 1895, were there any others?

A. Yes sir, there were other lands sold by the State to Pindell, to Leovy, to Gilmore, to Meloche, and perhaps to others, in this local-

By Mr. McCLURG:

Q. Those were Isle à Pitre lands?

A. No sir; they were other lands in this disputed territory.

By Mr. ZACHARIE:

Q. Then, were you, or not, correct in the answer which you made to the last cross interrogatory of counsel for Mississippi, that there

had been no grants of any considerable portion of territory by the State or the levee board, prior to 1895?

A. Well, I was incorrect if you were to say that a considerable portion was an ordinary grant. I gathered from the counsel that he meant a sale of a very large area. That was my intention in answering it; that there had — sundry grants, but there was no transfer like the State to the levee board or anything of that sort.

Recross-examination.

By Mr. McCLURG:

Q. There were no such grants as those made to Dunbar and McGraw of later years, prior to 1890, were there?

A. Well——

Q. No large grants like those, made to individuals, prior to 1890?

A. I would have to look at the records in order to be able to accurately state the acreage of the grants in order that I might make a fair comparison. I would not like to venture an answer to that, offhand.

896 Q. I will not trouble you to look up the acreage. My question was only of a general nature. You said something, it could be found from the records, it will not be necessary to do that.

A. The Gilmores received patents direct from the State, prior to 1890, of an area, I think, almost as large as either Dunbar or McGraw purchased from the levee board. Mr. Meloche also acquired an area of some considerable proportions. I must again state that I could not give you the exact acreage of either of these grants, and therefore make a fair comparison, without referring to the grants themselves, as I did not burden my memory with the acreage of each grant.

Q. The Gilmore and Meloche grants were about — dates?

A. I think about 1887 or 1888.

F. BILDSTEIN, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. In New Orleans.

Q. Whereabouts in New Orleans?

A. 119 North Roman.

Q. What is your present occupation?

A. Photo-engraver. Manager of the Photo-engraving Company.

Q. Will you please look at these plates and state whether they were made by you?

A. Yes sir. This map was made by me.

Q. You say map, do you mean plate?

A. Yes sir.

Q. Will you please look at the other two plates which are before you and state whether they were also made by you?

97 A. This here also.

Q. Will you please look at the third plate?

A. Also the third one.

Q. Will you please look at these diagrams numbers 1, 3 and 5 and state whether they were used by you in the preparation of these plates which are now before you.

A. I recollect having used diagram No. 3 in preparing this plate.

Q. Will you please now look at diagram No. 1 and state whether you used it in preparing the correspondence plate?

A. Yes sir; I also used diagram No. 1 in producing this plate that I hold in my hand.

Q. Will you please now look at diagram No. 5 and state whether you used it in preparing your plate representing that diagram?

A. Yes sir; plate No. 5 was made from diagram No. 5, this plate here.

Q. In having these diagrams delivered to you, what was the purpose of having them delivered to you?

A. To establish these plates, to make these engravings.

Q. For what purpose were the plates to be used, if you know?

A. I did not know that at the time.

Q. I don't mean for any technical purpose in any particular case, but why were the plates made?

A. To take impressions from, to print from.

Q. To make more copies of the original, is that the idea?

A. Yes sir.

Q. Do these plates represent correctly the diagrams which were given to you to reproduce in plate form?

A. Yes sir, they represent them correctly because we photograph these diagrams and thereby we get an accurate copy, so there can be no omission of any details.

Q. Did you then transfer that to the metal?

A. Yes sir, transfer the photograph to the metal by aid of the negative.

98 Q. Will you please look at the copy of the original bill of complaint in this cause, and state whether you recognize diagrams 1, 2, 3 and 5, as having been printed from the plates prepared by you?

A. I recognize No. 5; I recognize No. 3; and I recognize No. 1; but No. 2 is the same as No. 1.

Cross-examination.

By Mr. McClurg:

Q. You did not make the original diagrams?

A. No sir, they are made from maps.

Q. And turned over to you?

A. Yes sir.

Q. And then you did what, first?

A. We take a photograph of these diagrams and establish a negative and from that negative we print on to the zinc, the metal, the metal is called zinc, we print on to that zinc and we etch it chemically.

Q. What do you mean by that?

A. We make the excavations you see here and there caused by the action of the acid on the plate, leaving only the lines which are supposed to print, in relief.

Q. Then, if there is any incorrectness or defections of any kind in the original map from which the diagrams are made, that same incorrectness or deficiency will be carried into the plate?

A. Yes sir, the plate will show that same deficiency; show it also correct if it is correct.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the map of the State of Mississippi
899 with a large portion of Louisiana and Alabama, compiled and published by John La Tourette of Mobile Alabama, the original to be marked map No. 56 and to be filed in evidence and a copy of same to be furnished to counsel for the State of Mississippi.

Also offer, produce and file in evidence, extract from the Abridgement of Debates of Congress by D. Appleton of New York, 1857, vol. 4, page 320 *et seq.* Orleans territory, to be marked Document No. 34, and a copy thereof being furnished to the counsel for the State of Mississippi.

Also offer, produce and file in evidence, extract from the Abridgement of Debates in Congress by D. Appleton and Co. of New York, 1857, vol. 3, page 8; boundaries of the province of Louisiana; to be known as Document No. 25, and a copy thereof being tendered to counsel for the State of Mississippi.

Also offer, produce and file in evidence, extract from De Bow's Review vol. 23, pages 513 *et seq.* to be known as Document No. 36, and a copy thereof being furnished to the State of Mississippi.

Mr. DYMOND: In closing the evidence in chief for the State
900 of Louisiana, in this cause, at this time, counsel for Louisiana reserve the right to introduce the further evidence of two or three witnesses now absent from the city of New Orleans, who were to have been examined on Saturday April 30th 1904, and also two or three maps and some other documents, in connection with the evidence of said witnesses. Said evidence and testimony shall be taken at New Orleans during the month of May, at such date as may suit the convenience of the counsel for Mississippi, after agreement with counsel on both sides. In view of the expiration of the time (April 30th 1904) allowed counsel for Louisiana to introduce evidence in chief, counsel for the State of Mississippi agree and consent to the taking of the testimony and evidence hereinbe-

fore mentioned, in this reservation under the conditions hereinbefore expressed, and in modification of the prior agreement as to the time for taking of evidence in chief on the part of the State of Louisiana, counsel for Louisiana further agree, in consideration of the consent of Mississippi hereto, to extend the time of taking testimony and other evidence by counsel for Mississippi, should a similar emergency occur.

Mr. Dymond: Counsel for the State of Louisiana, announces
901 that the evidence in chief for the State of Louisiana is closed except as hereinbefore provided.

NEW ORLEANS, May 30, 1904.

Pursuant to the agreement between counsel for the State of Louisiana and counsel for the State of Mississippi, entered into on the 29th day of April 1904, the further taking of evidence was this day resumed.

Present: Hon. Frank H. Mortimer, commissioner.

" Hon. Monroe McClurg, associate counsel on behalf of the State of Mississippi.

" Hon. Walter Guion, attorney general of the State of Louisiana.

" Messrs. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

WILLIAM BEER, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. When you were last on the stand on cross examination by counsel for Mississippi, you made certain measurements on the Lafon map and gave certain distances as measured by you as so many leagues or so many miles; did you or did you not measure them by the scale that was on the Lafon map?

A. I did. My evidence was based entirely on the scale of
902 the map itself.

Q. Did you notice, or, have you since noticed that on the Lafon — the scale was the French word *lieues*, the French league?

A. I noticed on the particular map which we are speaking of, or which I think we are speaking of three distinct scales, one to French leagues, one to English leagues and of miles.

Q. By which measure or scale, did you measure your distance?

A. The one at the top which I believe was of French leagues. I am speaking from memory, you know.

Q. What is the difference between a French league and an English league?

A. French league measures in France vary a great deal and to speak of the French league of a particular period would lead to identify that period.

Q. Is it not a fact that the common definition of a French league is $2\frac{1}{2}$ English miles instead of three English miles as to the English or American league?

A. It is a fact that there are more French leagues to the degree than English leagues and therefore it is less. I am not prepared to say $2\frac{1}{2}$ miles.

Q. You are not prepared to say the difference between—

A. No sir.

Q. Have you not looked in a dictionary or some works to discover the difference?

A. No sir.

Q. Then if it be a fact that the French league is $2\frac{1}{2}$ English miles and the English league is 3 English miles, then your testimony on that point ought to be corrected?

A. It ought to be supplemented by a change for English leagues.

Q. For English miles?

A. Yes sir. My testimony was correct so far as it applied
903 to those particular leagues.

By Mr. Dymond:

Q. In your testimony on cross examination, when you were last on the stand, if I recollect, you were interrogated on the subject of Chef Menteur, as the channel of travel between Lake Pontchartrain and the waters to the east of Pearl—you were asked, I believe, a leading question, responding in the affirmative. Have you had occasion since, to acquaint yourself with what history shows to have been the facts in regard to travel between New Orleans via Lake Pontchartrain and this coast to the eastward?

A. So far as I can remember the examination was on the basis of a channel and therefore of commercial travel from New Orleans to the mouth of Lake Pontchartrain. I was asked whether it did not enter the gulf of Mexico from Lake Pontchartrain by way of Bayou Chef Menteur and at that time I believed—not knowing the position, was not strongly against it, I believe I gave a weak consent to the possibility of the line having been pursued by way of Bayou Chef Menteur. I have since studied the question and found that for all time within my knowledge, within my power of obtaining information, the regular channel has been by the Rigolets. I found that Bayou Chef Menteur, which, although a possible channel, has not been in use for the purpose.

Q. Will you please examine this map, being entitled map of the United States with contiguous British and Spanish possessions, compiled from the latest and best authorities by John Melish, engraved by J. Vallance and H. S. Tanner, entered according to the act of Congress the 6th day of June 1816, published by John Melish of

Philadelphia, improved to the first of January 1818. Have you examined the map?

904 A. Yes sir; I have examined the map before.

Q. Whose map is this?

A. It is my map.

Q. Does it belong to the collection in the Howard Memorial library or to you personally?

A. To myself personally.

Q. Will you please look at this photo print, and state whether you have compared it with the original map?

A. I have compared it with the original map.

Q. Except for the reduction in size and the difference in color is that photo print a true and faithful photo print of the original?

A. The photo print of the entire map and also of the portions under discussion, are true and faithful photographic reprints of the original.

Mr. DYMOND: Counsel for the State of Louisiana, for the purpose of identification now desires said photo prints to be known as map-No. 57 and 57-a.

Q. Will you please examine map bearing the title "A new chart of the West Indies, gulf of Mexico, and the northern provinces of South America, compiled from the most recent Spanish and other surveys by Joseph Dession, published March 1st, 1813, by James Whittle and Richard Holmes Laurie, No. 53 Fleet street, London, improved edition with additions to 1818?

A. I have examined this map, especially the parts under discussion.

Q. To whom does this map belong?

A. To myself.

Q. Will you please look at this map with particular reference to the territory at present in dispute in this case, and compare with the map and with the disputed territory the photo prints which are now handed to you?

A. I have examined the maps and compared them with
905 the photographs in my hands.

Q. Except for the reduction in size and the absence of color, how do these photo prints compare with the original map?

A. They are correct photographic prints of the original map.

Mr. DYMOND: Counsel for the State of Louisiana now desires the photo print to be known as map 58 and 58-a.

Q. You will note Mr. Beer that there has been no coloring put by hand on these photo prints and that the division lines between the political sub-divisions on the map are very broad in the photo print. Will you please state if you are able to, why those broad lines appear in the photo prints?

A. The red and green lines take black under photography. The

representation is better in its present state, than if colored in attempted imitation of the original.

By Mr. ZACHARIE :

Q. Mr. Beer, in the photo prints the islands which lie north of the Saint Bernard territory, the peninsula or archipelago and then between the peninsula and the coast of Mississippi how are they colored on the original map ; as to what State they belong. I am talking about map 58-a ?

A. They are not colored with any attempt to give them a State belonging.

Q. Are they not the same color as the Louisiana territory ?

A. No ; the sea is colored blue and the blue color has been run over the islands and there are other small islands in black. This is distinctly green.

Q. What would you call that ?

A. This is blue, but there is no attempt at all in that.

By Mr. DYMOND :

Q. How is the Saint Bernard peninsula colored on this
906 map No. 58-a and as belonging to what State ?

A. It is colored as belonging to Louisiana. The whole of the lower parishes of Louisiana are colored green together with that of Saint Bernard.

Q. How is the Saint Bernard peninsula colored on this map No. 57-a as belonging to what State ?

A. It is colored yellow the same as the whole State of Louisiana.

Cross-examination.

By Mr. CLURG :

Q. Mr. Beer, in the statement you have made with reference to to Chef Menteur ; as I understand you, your statement is intended as a kind of a summary of your recent historical researches ; am I correct ?

A. Yes sir.

Q. It is not based upon any personal observation or personal knowledge of Chef Menteur ?

A. No sir.

Q. Have you ever seen that outlet ?

A. It is because I have seen it frequently and seen its width that I am willing to assent to the proposition that it might have been used as a channel. After having assented to the proposition I wondered if it were correct and endeavored to discover some traces of its use commercially, of its use as a regular channel, but was unable to do so.

Q. Is there not an old fort on Chef Menteur somewhere ?

A. Yes sir, and there is the difference between a possible passage and an actually used passage. On the expected invasion of New Or-

leons, forts were placed on all passes which might possibly be used for the purpose, not necessarily inferring that they were regular passages.

Q. Did your investigation of history inform you as to when that fort was built?

A. No. I had no special—I had not that in view.

Q. Or by whom it was built?

A. No sir.

907 Q. There is also a fort on the Rigolets is there not?

A. I only remember in passing rapidly by the railroad, seeing one fort within easy distance of the railroad and another fort more distant.

Q. With reference to your measurements according to the French league of which you testified this morning, are you clear in your statement that you made those measurements when you were on the stand once before, by the French league rather than by the English league or mile?

A. I made them by the uppermost scale on that map, so far as I remember correctly, or *lieues Francaise*.

Q. Your recollection is that that was the French league scale?

A. Yes sir.

Q. The Melish map about which you have been testifying; is that the same map that we have been using in this case *be* before?

A. This is another map of another date. I think this is of a later date, later or earlier. This map is of interest because it is spoken of in the treaty between the countries between the United States and Spain.

Q. You find nothing on this Melish map No. 57 about which you have testified this morning—improved to the first of January 1818—that indicates any deep water channel as a dividing line between Mississippi and Louisiana?

A. Nothing.

Q. You had something to say this morning and heretofore, with reference to coloring. I will ask you in view of your qualifications as an expert on these maps and on all other matters with reference to which you have qualified yourself, whether you give any special significance to the geographers or map makers with reference to coloring of outlying islands?

A. Very little indeed.

Q. I note upon the map now under inquiry, the Melish map of 1818, that the Chandeleur islands are not colored at all, while
908 Horn, Dog, Ship and Cat islands bear the Mississippi coloring. I see no sign of Half Moon and Round islands. That is true is it not?

A. I see no sign of distinctive coloring for those islands. The only islands colored to signify State ownership are the four you name, Dog, Horn, Ship and Cat islands, and that coloring is Mississippi coloring.

Q. The Chandeleur islands are not colored.

A. They are not colored at all.

Q. Calling your attention to the map of the West Indies by Joseph Dessiou, I will ask you to examine it and say whether there is anything upon it to indicate any deep water channel out of Lake Borgne through the Mississippi sound?

A. There are lines of soundings; those lines of sounding are along the coast of Louisiana and the coast of Mississippi; there is nothing to show that they indicate specially a deep water channel.

Q. And there is nothing to indicate any line dividing the two States, upon that map?

A. There is nothing in the way of indicating a division between the two States.

Q. And there is nothing on either of the maps about which you testified this morning, that names or marks the Mississippi sound as distinguished from the gulf of Mexico?

A. The word Mississippi sound does not appear on either map.

Q. I have noticed in the examination of witnesses for Louisiana and especially of yourself, that frequent mention has been made of the Saint Bernard peninsular or archipelago—

A. I don't remember archipelago.

Q. —or synonymous words. I would like to ask you whether you have seen on any map, any designation of any part of this disputed territory as an archipelago or peninsular?

909 A. I would not admit that the word archipelago could be used in connection with it, archipelago being a collection of islands and this being a peninsular being a part of the main land. I have never seen it designated on a map as a peninsula nor as an archipelago.

Q. I ask you this question in order that there may be no confusion in reading the testimony and that it may be clearly understood that the use of peninsular, archipelago and similar terms are the words of counsel rather than history or geographers or map makers? That is correct, is it not?

A. Yes sir.

ERNEST J. BELLOCQ, witness, recalled, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at these maps which are known as map 57 and map No. 58, and look at these photo prints which are known as map 57 and 57-a and 58 and 58-a, and state whether these photo prints were made by you or under your supervision, the same as the other photo prints offered in evidence in this case and concerning which you have previously testified?

A. Yes sir.

Q. You have compared them with the map and found them to be correct photographic reproductions of the map?

A. Yes sir.

Q. Except as to color and dimensions?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. These photo prints were made exactly like the others, about which you have testified in this case?

910 A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of Mr. William Beer and Mr. Ernest J. Bellocq, now offer, produce and file in evidence the said photo prints marked maps 57 & 57-a and 58 & 58-a, and tender to counsel of the State of Mississippi copies of said photo prints.

THOMAS P. THOMPSON, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. Where do you live?

A. 1812 Calhounstreet, New Orleans.

Q. How long have you resided in New Orleans?

A. I first came here in 1880. I have resided here regularly since 1890.

Q. Have you paid much attention and study to the history and cartography of the State of Louisiana?

A. I have paid considerable attention to the history of Louisiana, incidentally the cartography.

Q. Have you a large collection of works?

A. I have a large collection of works.

Q. How many volumes do you suppose altogether?

A. I have several thousand volumes, perhaps four thousand altogether, volumes and maps and pamphlets and books.

Q. We have offered in evidence in this case map No. 20, being a map by William Darby published in 1816. We would like
911 to get from you, so far as your research and study has gone, what was the history of William Darby the author of this map and his opportunities for observing and preparing the cartography of the State of Louisiana?

A. William Darby was a surveyor. His original employment, from what I have read, was to assist in drawing the boundary line between Canada and the United States. He came to the Mississippi valley, or Louisiana, in the latter part of the eighteenth century

about 1799, with Andrew Ellicott, and was commissioned to determine the boundary line between the American possessions and the Spanish possessions north of what is now known as the Florida parishes. Darby resided in Louisiana after that time, from what I can gather, and began to gather data to construct a map of the State of Louisiana. After 11 years of work on that, surveying, and collecting material, he published a map of Louisiana on the 8th day of April 1816.

Q. What do you know, if anything, about William Darby's familiarity with the section or territory which is now in dispute in this case?

A. William Darby acting under Andrew Jackson established a fort at about the Terre Bœuf bayou which is marked on his map Fort Darby. He is referred to by H. H. Breckenridge as being qualified because of his indefatigable research to give a correct representation of Louisiana which Breckenridge incidentally says is the most difficult State to survey.

Q. Do you know, in so far as the preparation of this map is concerned, how it was regarded by eminent authorities, if you know of any, will you please mention, in regard to its correctness?

A. I have seen printed endorsements of the accuracy of the map from Breckenridge, Thomas Jefferson, and Andrew Jackson, and many other names. I have not a memorandum of them just now.

Q. Do you remember whether General Wilkinson, Governor Claiborne and General Gaines also endorsed him?

A. All of those names I remember having seen as endorsers of the map.

Q. Will you please examine this extract taken from Appleton's Encyclopedia and say whether that is a correct transcript.

A. That is a correct transcript.

Mr. ZACHARIE: We offer in evidence this extract from Appleton's Encyclopedia of Biography 1856, to be marked Document No. 67; copy being furnished to counsel for the State of Mississippi.

Q. Do you remember, Mr. Thompson, whether Mr. Darby wrote any works in regard to the geography of Louisiana?

A. Darby wrote a book printed in 1816, entitled the Geographical Description of Louisiana. Nearly two years later he wrote a second book and added to the title, with a part of the State of Mississippi and Territory of Alabama, I think the title is. He also wrote a little later, one year later, an Emigrant's Guide which included data on Louisiana.

Q. Will you be kind enough to examine this document and state whether those extracts are correct?

A. It is a correct transcript. The only thing I notice there, is, Preface to First Edition; that Preface to First Edition is published in both volumes, first and second volumes, this data is from the

second edition, published in 1817; in the second edition of Darby's Geographical Description of Louisiana.

Mr. ZACHARIE: We now offer in evidence extract from the
913 Geographical Description of the State of Louisiana etc., by William Darby, to be known as Document No. 68, and a copy thereof is furnished to counsel for the State of Mississippi.

Q. Will you look at and examine this document, extract from Emigrant's Guide by William Darby, 1818, and say if those extracts are correct copies?

A. I have examined these extracts and they are correct copies.

Mr. ZACHARIE: Counsel for the State of Louisiana offer, produce and file in evidence the said extracts being known as Document No. 69; and tender a copy thereof to counsel for the State of Mississippi.

Q. Will you examine these additional extracts from the Emigrant's Guide by William Darby and state whether they are correct?

A. I have examined the additional extracts from Emigrant's Guide and they are correct.

Mr. ZACHARIE: Counsel for Louisiana offer in evidence additional extracts from Emigrant's Guide by William Darby, to be filed as Document No. 70, a copy thereof furnished to counsel for the State of Mississippi.

Q. Will you please examine and state whether that is a correct copy from the article third of the treaty of 1819 between Spain and the United States?

A. I have examined it and it is a true and correct copy of it.

Mr. ZACHARIE: Counsel for Louisiana offer, and file in evidence, copy of article third of the treaty between the United States
914 and Spain of February 22nd 1819, a copy thereof furnished to counsel for Mississippi, the same to be known as Document No. 71.

Q. Have you ever compared that extract?

A. I have not made a comparison of this extract. I have a book that this refers to.

Mr. ZACHARIE: Counsel for Louisiana offer and file in evidence, an extract from the Report upon the Physics and Hydraulics of the Mississippi River by Capt. A. A. Humphreys and Lt. W. L. Abbot. And counsel for Mississippi has no objection as to it being a correct copy from that work. A copy of said extract is furnished counsel for the State of Mississippi, and the said extract to be known as Document No. 72.

Q. Now, Mr. Thompson, in one of these extracts on page 308 of the Geographical Description of Louisiana by William Darby, he

says "The islands of Malheureux, Marianna, and Cat island, are included in the bounds assigned to both the States of Louisiana and Mississippi. There must have been some oversight in framing the respective acts, which marked the possessions of each State. The islands are in themselves of no great consequence, they are mere banks of sand, decorated with sea myrtle and a few pine trees. There are two good harbors contiguous to Cat island, but its position will render them in a great measure useless to navigation, except as a temporary shelter to vessels approaching the coast." Now will you please examine the map and state how they appear upon the map?

915 A. The Marianne group—by appearance do you mean?

Q. The coloring?

A. The Marianne group are colored green as the main land of Louisiana is colored, also Cat island. The Malheureux islands, group, are colored red as the State of Mississippi is colored.

Q. Now, you have one of these maps have you not?

A. Yes sir.

Q. How are those islands colored on the map which you have?

A. They are colored the same as Louisiana with the exception of a little dip at the end of one of the Malheureux islands has a reddish look.

Q. How do you account, as a student of cartography, for these divergencies between the maps?

A. The coloring is not done by Darby; I should judge the coloring was done according to instructions from Darby and perhaps the colorist made an error in an island.

Q. So that there is a divergence between this map of Darby's and the one you have.

A. Yes sir.

Q. They are by the same author?

A. Yes sir, William Darby.

Q. Do you know, Mr. Thompson, from your reading about William Darby, was he his own cartographer and draftsman?

A. From all I can gather from what he says and what has been said about him, he went personally over the entire State and got his data together, in a period of ten or 12 years.

Q. I have understood that he personally drew these maps and superintended—so he did not trust to anybody drawing his maps of the actual surveys by William Darby.

A. Some question has been raised about the word peninsular. In some of these extracts he speaks of the projection of Saint

916 Bernard as a peninsular. Do you observe on this map anything where he calls it a peninsular?

A. This parish of Plaquemines which is now Saint Bernard, the tongue or peninsular is referred to on the peninsular; the following is printed on the peninsular. "This peninsular has never been surveyed northeast of Bayou Terre aux Boeuf. The coast and interior

remain but imperfectly known. The surface is flat and but little elevated above the level of the sea."

By Mr. DYMOND:

Q. I notice, Mr. Thompson, from Document No. 69, the following description of Lake Borgne, as published by William Darby in 1818, to-wit: "Lake Borgne is a prolongation of the strait reaching from the Rigolets to Mobile. It is thirty-five miles in length from Cat island to the mouth of Bayou Bienvenu, with a medial width of twelve miles. Lake Borgne is checkered with two groups of small islands, Malheureux and Marianne islands. It is extremely shoal; excepting a narrow channel running along its north-western border, there is not more than two feet of water to be found in the whole expanse of the lake. Lake Borgne is terminated on the northeast by the beautiful Bay St. Louis; on the east by Cat island, and south-east by a long flat peninsular already noticed." Will you please look at this large map, which we will now for purposes of identification call map No. 59, which purports to be parts of Lake Borgne and Mississippi sound, Louisiana, composed of parts of charts 190, 191 and 192, issued in March 1904 by the Coast and Geodetic Survey published at Washington, D. C. and glance at the soundings of the depth of water in Lake Borgne and state what is about
917 the average depth of Lake Borgne as shown by those soundings.

A. The average depth would appear to be about $3\frac{1}{2}$ feet, 3 or $3\frac{1}{2}$ feet.

Q. Are you familiar, Mr. Thompson, with the history of the River Iberville, now known as Bayou Manchac?

A. The Iberville river, this bayou or river is referred to in the early books as Iberville and later on as Manchac.

Q. Have you any knowledge, historical or from historical sources as to when Bayou Manchac or River Iberville was closed at the point connecting it with the Mississippi river?

A. Gayarre states that by the order of Andrew Jackson the Bayou Manchac was closed in 1814, and that it has remained closed ever since.

Q. Who was Gayarre; what Gayarre do you refer to?

A. Charles Gayarre is known as the historian of Louisiana; his first published history was in 1830; since that time he has published at least five—there have been published at least seven editions of Gayarre's history.

Q. Is his history accepted as an authority on Louisiana?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Mr. McCLURG: Counsel for the State of Mississippi excepts and objects to so much of the testimony of Mr. Thompson and of Mr.

Beer, as undertakes to give excerpts from history, upon the ground that such matter cannot be proven by witnesses, but speaks for himself and counsel for Mississippi excepts to Documents 67, 68, 69, 70, 71 and 72 for the same reason, that it is historical matter not to be proven by the testimony of witnesses in the manner offered to be proven by Louisiana in this cause. Counsel does not intend to except to the documents being correct transcripts from books, but to the proving of the matter in the manner adopted by Louisiana.

Q. You spoke, Mr. Thompson, of there being some difference between the Darby map before you and one which you personally own, with reference to the coloring of the islands especially. Please give the dates of these two maps?

A. The dates are identical, of the two maps that I refer to; but to make it clear, Darby's original map was published on the 8th day of April 1816, according to act of Congress. Later when Mississippi was erected into a State, Darby published June 17, 1817 a new map revising the map of 1816. I refer to the latest Darby map of 1817 which I have before me. The map that I speak of as my own is of the same date. The Malheureux islands are colored on my map as Louisiana is colored, except a small point near the coast of Mississippi which has the color of Mississippi, a part of one island.

Q. Do you know of any other difference between the two maps?

A. Between the two latest maps?

Q. Yes?

A. There are no other differences that I can see, except in the coloring.

Q. The one that you personally own is not before you and you have not critically compared it with that one you have before you?

A. I have examined the particular matter of the coloring of the Malheureux islands on my map and I know that all of the Malheureux islands are not colored alike, that a small part of one island is colored like the color on Mississippi State.

Q. Do you not gather from the map before you, that Darby believed that the Malheureux islands belonged to Mississippi, a Territory then, and to Mississippi State after it was organized?

A. Darby published a description with this map in which he distinctly states that those three islands have become involved by the acts creating the States so that the boundaries lap, and he does not know to which State they belong. He speaks in that way of the Malheureux, of the Marianne and Cat islands.

Q. But he indicates on the map before you, that the Malheureux islands belong to Mississippi, by the coloring?

A. They are colored similar to Mississippi?

Q. The Marianne and Cat island are colored similar to Louisiana?

A. Yes sir.

Q. Are these Marianne islands known by that name now?

A. They have subsided into the water.

Q. Well, Round island is not marked, or Half Moon island, is it?

A. It is not marked on this map.

Q. As a matter of fact do you attach much significance to the map coloring as a distinguishing line between two States?

A. I do, with Darby, in a measure, because having given this so much attention that his coloring was certainly the current idea of the time. But as he excepts, in the case of these three outlying, the three groups of outlying islands, and also the two maps printed at the same time varying a little, I would say that I would not depend much on that particular—those particular islands,—on the color of those particular islands.

920 Q. I believe you stated that whether Mr. Darby was his own cartographer, that he gave it his personal supervision?

A. I can only state that from everything I can gather that this map is Darby's from actual survey; he does not state whether he did the coloring.

Q. You cannot state whether he gave it his personal supervision, or not?

A. It was Mr. Darby's enterprise and it was commercial, in a measure, he sold the map and I imagine that he gave it the attention that it deserved during 11 years' preparation.

Q. He was by profession a surveyor?

A. Yes sir, he was an engineer and surveyor.

Q. You spoke of a large library of four thousand volumes. Have you found in any of those books, especially with reference to the history of Louisiana, anything that undertakes to designate the deep water channel out of the mouth of Pearl river and Lake Borgne to the southwest of Cat island or, in other words, the line claimed by Louisiana to be the boundary line in this case. Can you find anything designating that line as the true dividing line between these two States?

A. I don't remember seeing any direct reference; but I have not investigated with a view to finding—in books of travel the route is indicated by which a person would cross from Mobile to New Orleans by water.

Q. That is intended for navigation and commercial purposes?

A. Yes sir. And then travellers in telling of their own travels mention the route through which they came.

Q. Have you any idea, Mr. Thompson, how far it is by sea around the coast of Louisiana from the mouth of Pearl river to the mouth of the Sabine river?

A. Without the data before me I have no idea, definite idea.

Q. What is your estimate of that distance?

921 A. I would not make an estimate. The coast line is so indented that it would be almost as impossible, without data, as it would be to give the length of the Mississippi river to some point.

Q. I will ask you to take the scale marked here and make rough estimate, not intending that it shall be correct, of the distance around the coast of Louisiana from the mouth of the Pearl river to the mouth of the Sabine river?

A. This will be very rough measurement, I don't know that the coast includes all around in those bays and inlets. It is about 465 miles, roughly.

At this stage of the proceedings the hearing was adjourned for recess by the commissioner until 2 p. m. to be resumed at the same place and date.

922

Resumption of Proceedings.

2 P. M.

Pursuant to adjournment for recess, the hearing was resumed at the same place at the hour of 2 p. m.

It is agreed between counsel for the State of Louisiana and counsel for the State of Mississippi that the following extract from a letter by W. C. Hodgkins to Judge Walter Guion under date of May 2nd 1904, shall be copied in the record as a correction of a typographical error in the list of maps accompanying the report of Mr. Hodgkins, marked Document 11, which agreement is made at the request of Mr. W. C. Hodgkins, to-wit:

"WASHINGTON, May 2nd, 1904.

Hon. Walter Guion, att'y general of Louisiana, New Orleans.

DEAR SIR: I have received your letter dated April 29th 1904, and thank you for calling my attention to certain apparent discrepancies in the list of maps attached to my report dated January 30th 1901.

In reply to your letter, I beg to state that the discrepancy in the statement as to the Melish maps of 1820 in the "Louisiana list" is due to an error of the typewriter in copying my manuscript notes in 1901 for the original report, by which my note about the Melish map of Mississippi was cut in two and a note about Tanner's American Atlas was interjected between the two parts. It should have read thus: 1820. John Melish's map of Mississippi does not color islands, but apparently puts the Malheureux islands in Louisiana. Melish's map of Louisiana, 1820, differs from above. (See Miss. list) Here I will add that on both of these maps, the islands are not colored, but at that time and for the purpose of that report, it was assumed that if on a map of a certain State the coloring proper to that State was not extended to the islands, the latter must be considered abandoned to some other State. I am not certain that that was the best assumption to make, but you can see from this how the conclusions stated were reached.

923

With reference to the Hardee map of 1868 in the "undeterminate list" I would say that the entry cited should read :
 924 1868. T. S. Hardee's official map of Mississippi does not color Cat island.

It was intended to convey no further meaning than that direct statement.

* * * * *

Very truly yours,
 (Signed)

W. C. HODGKINS."

Mr. DYMOND : Counsel for the State of Louisiana now offer, produce and file in evidence map No. 59, being map of part of Lake Borgne and Mississippi sound, Louisiana, composed of parts of charts 190, 191 and 192, published at Washington, D. C. March 1904 by the Coast and Geodetic Survey, with copy thereof being tendered to the State of Mississippi.

FRANK HASTINGS MORTIMER,
 Commissioner.

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Frank Hastings Mortimer, Commissioner.

Resumption of Proceedings.

In accordance with the agreement of counsel and pursuant to the adjournment had at Jackson, Mississippi, Saturday August 20th 1904, proceedings in the taking of testimony and evidence were herein re-commenced on Thursday August 25th 1904.

Present: Hon. Frank H. Mortimer, commissioner.

Hon. Walter Guion, att'y general of the State of Louisiana.

John Dymond, Jr., Esq. and F. C. Zacharie, associate counsel representing the State of Louisiana.

Hon. Monroe McClurg, associate counsel of the State of Mississippi.

J. M. BREAUX, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Mr. Breaux, you have testified in this case and if I am not mistaken you are the president of the Oyster Commission of Louisiana which made an agreement with the Oyster Commission of Mississippi in September 1902 creating a neutral zone or territory in which the vessels and oyster boats of the two States could fish. Is that correct?

A. Yes sir; that is right.

Q. The State of Mississippi, in its evidence, recently taken, has placed witnesses on the stand to testify to the effect that there was no danger of an armed conflict between the authorities of the State of Louisiana and the State of Mississippi previous to the filing of this suit which was filed in October 1902. Do you recall in what month it was that the two oyster commissions of the two States met in the city of New Orleans?

A. I think it was in September.

Q. Of 1902?

A. Of 1902.

Q. Do you know what the provisions, and did you know at the time, what the provisions of the Louisiana law were in regard to the jurisdiction and control of the Oyster Commission of Louisiana over the oyster waters of the State of Louisiana?

A. Yes sir.

Q. Did you, at the time, consider that the territory which we commonly call now, the neutral territory was part of the State of Louisiana?

A. Yes sir.

Q. Would you or would you not, have considered it necessary in the absence of an amicable agreement between the two States to have enforced the Louisiana law in what is now called the neutral territory?

A. Beyond a doubt.

Q. Were you authorized by the Louisiana law, as the Oyster Commission of Louisiana, to maintain an armed patrol boat, in patrolling the waters of the State of Louisiana and enforcing the Louisiana law?

A. We were.

Q. Did you maintain such a patrol boat in that territory?

A. We did.

Q. In the event there had been resistance on the part of the authorities of the State of Mississippi or the people of the State of Mississippi, to the enforcement of the Louisiana law in that territory, would you, or would you not, at that time, have felt compelled to have recourse to your armed patrol boat to enforce Louisiana's right in that territory?

A. Certainly I would.

Mr. McCLURG: The question is leading and is objected to on that account, and the answer is excepted to.

Q. Mr. Breaux, you, of course, know there was an agreement made between these States which happily avoided any crisis. Suppose there had been no such agreement at that time, what would you have done as president of the Oyster Commission of Louisiana in regard to this disputed territory?

A. I would have protected the oyster territory of Louisiana in any way—well, with armed force as we had equipped our patrol boat for that purpose.

Q. Was this boat actually armed?

A. It was, yes sir.

Q. At the time and just immediately prior to this conference of those two commissions, which occurred in September 1902, was there any danger of a conflict and if so on what do you base your idea?

A. Was there any danger of a conflict before the understanding between the two commissions?

Q. Yes sir.

A. Well, we thought there would be probable danger of a conflict, yes, sir; in other words we were satisfied there would be unless there would be an agreement made between the two commissions and as president of the Oyster Commission of Louisiana I was determined to protect the Louisiana territory.

Q. In what way would that conflict have come about, and what facts, if any, made you think there would be a possibility of a conflict?

A. Well, the possibility of a conflict between the two States in regard to the territory would have been if we couldn't have come on some mutual agreement in regard to this territory.

Q. Did anyone say anything that would in any way indicate to you that there might be a conflict?

A. Well, when the two commissions met there was a great argument, as you know yourself, you were present, there was a great argument as to whether we could come on some agreement or not, and it was mentioned by some members of our commission that we would have to enforce our laws, if we couldn't come on some agreeable understanding and the president of the Oyster Commission of Biloxi, which was Mr. Hatlested—

928 Q. Of what State?

A. Mississippi. He said when that remark was made—he said that would be a doubled handed game.

Cross-examination.

By Mr. McCLURG:

Q. He said what would be a double handed game?

A. Well, if we attempted to defend our territory.

Q. As I understand it, the Oyster Commission of Louisiana, of which you are president, was created in 1902?

A. Yes sir.

Q. And that in 1902 you set about the organization of about ten districts reaching from the mouth of the Pearl river to the mouth of the Sabine river?

A. Yes sir.

Q. And procured patrol boats?

A. Yes sir.

Q. That at a mass meeting held in Mr. Dymond's office in New Orleans, or at a meeting of the Oyster Commission of Louisiana, you invited the Oyster Commission of the State of Mississippi to meet you in joint session?

A. Yes sir.

Q. Do you remember whether anything was said in that joint meeting of the two commissions as to a threatened armed conflict between the sheriff and the officers of the St. Bernard parish of Louisiana and the sheriff and other officers of the county of Harrison, in the State of Mississippi?

A. I am not certain that I heard anything about the sheriff—any difficulty with the sheriffs.

Q. Or officers of that county?

A. Or officers. The only—

Q. Well—

A. The only difficulty, the only talk of a difficulty—came between the two commissions.

Q. Yes, in September, 1902?

A. 1902, no—

Q. That was about the 27th day of September?

A. Somewhere near about that, as well as I can remember.

Q. As chairman or president of the Louisiana Oyster Commission

can you cite me any instance where there was in truth and in fact an impending crisis of a conflict between the sheriff and other officers of the parish of St. Bernard and the sheriff and other officers of the county of Harrison, Mississippi?

A. No, I couldn't positively say that; no more than all I can say in regard to the difficulty that we thought might arise was between the State of Mississippi and the State of Louisiana in regard to this disputed territory provided we couldn't come on an agreement with the Oyster Commission of Mississippi, and of course, we had made up our minds positively, I had as president of the board, that if we couldn't come on some friendly agreement in regard to this territory, that I would certainly see that the property of Louisiana would be protected by arms.

Q. How did you propose to protect the property of Louisiana?

A. With arms.

Q. How were you going to use arms?

A. Use them by our crew.

Q. Going to shoot them?

A. Why certainly if it was necessary, if we couldn't protect it any other way.

Q. What other way did you have in contemplation? Suppose you had gone out with that patrol boat and found a Mississippi boat on what you thought to be Louisiana territory?

A. But there was no thinking about that. We knew where the Louisiana territory was and we were determined to defend it.

Q. All right, I will correct my question. Suppose you had gone out and found Mississippians fishing on Louisiana territory, what would your patrolman have done?

A. Ordered them away.

Q. Suppose they had refused to go?

A. We would have made them go by force of arms.

Q. If they had not gone, you would have fired on their boat?

A. We would have forced them away if we had had to use arms.

Q. By what authority do you think you had the right to shoot those men on Louisiana territory?

A. By the authority vested in us by the oyster law.

Q. Now, Mr. Breaux, you don't undertake to take the position, do you, that even though you had police authority to patrol the waters of the sound within the State of Louisiana, that you had authority to shoot men who refused to leave?

A. We have.

Q. You have got that authority?

A. We have the authority to arrest them and pull them out of there, or if we couldn't do otherwise we could take them by force of arms.

Q. Suppose they had submitted to arrest?

A. We could have arrested them and sent them out of our lines or prosecuted them.

Q. You knew of no such armed boats, at that time, in the waters of the Mississippi gulf on the Mississippi side, did you?

A. No, we knew of no armed vessels on the Mississippi side, of course not.

Q. Now then as a matter of fact, you rather anticipated what might happen in your action rather than acting upon what had actually happened, did you not?

A. There was no anticipation about it. We had made up our minds positively as to what we would do.

Q. Under certain conditions?

A. Yes sir; under the condition that Mississippi would not defer to our conditions.

Q. In other words you intended to lay down the line and compel Mississippians to abide by it?

930 A. Of course, we intended to draw our lines and show Mississippi where we were certain Louisiana territory was and, of course, this disputed territory we wanted to give Mississippi a fair show and we told them we were willing to go on a compromise if they were willing; at the same time if they were not willing that we would certainly protect our territory.

Q. You took all those steps, all of those precautions before *they* had been any effort made to have the boundary between the two States judicially determined?

A. Why, of course, we—

Q. And you undertook to decide for yourself where the boundary was, as I understand it?

A. Not at all. We knew exactly where the boundary line was and Mississippi knew, and we were satisfied of the facts that Mississippi was intruding on our territory, but as we didn't want to rush things over them, we made them the proposition with the determination that if they didn't accept it we would defend our rights.

Q. So, then, after all, without undertaking to have the boundary otherwise determined than as your commission chose to determine it, you fixed the line and laid the law down to Mississippi?

A. Not at all; we didn't fix the line at all; the lines were already fixed.

Q. By whom?

A. By the Government.

Q. Which government?

A. United States Government. We guided ourselves entirely by our maps. We guided ourselves entirely by what we knew a fair and just cause as far as our territory was concerned.

Q. But you understand there was some doubt as to about where that line is in the waters?

A. You say that we have some doubt?

Q. No I say there is in fact some doubt?

A. I don't think there was any doubt in the Louisiana mind. I think there seems to be a little doubt from Mississippi.

Q. Now, then, Louisiana—you say there is doubt as to Louisiana's line?

A. No, sir.

Q. And you judge that by the acts of Congress admitting Louisiana into the Union?

A. Yes, sir.

Q. Very well. Now, then, you didn't wait until your own Louisiana courts or the Mississippi courts or the United States courts interpreted that act of Congress for both States and for the people of all the States, did you?

A. What?

Q. You said by your action, that we know the line is here?

931 A. Yes, sir.

Q. And we are going to defend it here?

A. Yes, sir.

Q. That was—

A. That was the determination of the Oyster Commission of Louisiana to defend it.

Q. And it is true, as I understand you, at that time there had been no real armed conflict or threatened armed conflict between St. Bernard parish and Harrison county?

A. Well, no, I don't see it was necessary to have any armed conflict where there was no law practically in regard to the oyster industry. This was a new law; we were appointed to execute those laws and defend the rights of the oyster territory of Louisiana. We had our attorney to consult. We examined the boundary line between Mississippi and Louisiana. We came to the firm conclusion that Mississippi fishermen were intruding on our rights. Consequently, we made up our minds to defend our rights, but before taking any serious action we thought we would act fair with the Mississippi people and ask them to join us and see what agreement we could make, which we did. We came to an agreement which you know what has been—

Q. Commonly called the neutral zone?

A. Yes, sir the neutral zone or neutral territory, and we agreed that this thing would be done in an amicable way and let the court decide whether Louisiana was right or not.

Q. Right or wrong, you were going to do it and let it be decided hereafter?

A. We had that power and we thought the authorities of Mississippi would back their commission just as the authorities of Louisiana were willing and have been willing to back our commission.

Q. As I understand you, you went about this matter deliberately? You first examined the statutes admitting these two States into the Union; then you conferred with the attorney of your commission and came to the firm conclusion that the boundary was as stated in your bill of complaint, I mean the bill of complaint by Louisiana against Mississippi?

A. Yes, sir.

Q. And after coming to that fixed conclusion, you then offered Mississippi an opportunity to agree to that?

A. To agree to what?

Q. That your line was correct, did you?

A. No, that is not it. Our object was to have a conference with the Mississippi Oyster Commission to let them be aware of our action towards this boundary line and see what conclusion they would come to.

Q. After you had fixed it in your own minds?

A. There was no fixing of it in our own minds; we found it already fixed on the map; we made no line at all in regard to the boundary line; the boundary line was visible.

Q. Then after the interpretation of the acts of Congress by your side of the question, you desired to hear from the Mississippi side and invited the Mississippi Oyster Commission in joint conference with you?

A. We did it to try and avoid the necessity of protecting our territory by force of arms, if possible. Consequently, we thought it nothing but right and just to give Mississippi a hearing in regard to it.

Q. You did give them a hearing?

A. Yes, sir, and at our conference there is where—after great argument—there is where we came to the conclusion it would
932 have to go in court and we came to the conclusion of creating this neutral territory or zone pending the decision of the United States Supreme Court.

Q. Did the Louisiana Oyster Commission believe they had any authority in law to establish and fix the boundary between these two States?

A. Certainly; we wouldn't have taken the steps we did if we did not.

Q. And that both States would be bound by the line you established?

A. I don't understand.

Q. And did you believe that both States would be bound by the line you established?

A. We established no line at all. We only established the neutral territory. The lines were already established on the maps; we merely established the neutral territory.

Q. I agree with you that the law does establish the line somewhere, but there might be some controversy about where that line is and what I meant to ask you is this: That your commission after examining the statutes and after conferring with your legal officer determined where the line was that the law had fixed, did you?

A. Why certainly, we couldn't help determining where the line was when we could see the line plainly on the map.

Q. Who made that map determining that line?

A. I can't exactly name who made it, but I suppose it was by some United States surveyor.

Q. Was that the deep-water channel line?

A. Yes, sir.

Q. So that—

A. That was the line made on the map that fixed it.

Q. So that this boundary line, which you say has already fixed by law, the acts of Congress, you have reference to the water channel or what is marked on the Government map the line out of the mouth of Pearl river?

A. No, not sailing line at all; the boundary line between Louisiana and Mississippi.

Q. Is not the deep water channel line the same thing going out the mouth of Pearl river southwest of Cat island into Cat Island channel through—

A. Which is considered the boundary line between Louisiana and Mississippi.

Q. That is the line which you say the law fixed?

A. As far as that is concerned I don't say what the law fixed only say we found it fixed on the map.

Q. So you were governed by the map?

A. Yes, sir.

Q. Which map?

A. The map furnished us by our attorney.

Q. Is it not true that you fixed the boundary according to instructions of your attorney rather than by map or law?

A. No, sir we fixed no boundary whatever; we only fixed the neutral territory. As far as the boundary was concerned, we were satisfied that that was fixed already.

Q. Why were you satisfied?

A. Because the map says it was fixed.

Q. Tell which map it was?

A. Mr. Dymond which map was that?

933 Mr. DYMOND: That is Exhibit E.

Q. That is the map that has the red lines drawn. You remember Exhibit E.

A. Yes sir.

Q. And that map says that the deep water channel is the line between the two States.

A. As far as that is concerned it might have run into deep water a certain distance and it might have run in shallow water other distances, I don't know.

Q. What did your attorney and other members of your commission say to the Mississippi commission and her attorney in September when you first fixed this neutral line? Did you tell them your determination to protect the interest of Louisiana up to the deep water channel?

A. Yes sir. And that we desired, however, to try and protect in an amicable way if possible.

Q. And if not possible to do it that they might look for a fight?

A. Yes sir, that we would protect it at all hazards.

Q. And then you offered Mississippi the alternative of agreeing with you on a neutral zone to be enjoyed until the termination of this suit, or fight?

A. Well, we didn't exactly offer it; we merely stated to the Oyster Commission of Mississippi that we wanted this thing settled in a friendly way if possible, and if not that we were determined to defend our rights at all hazards, and that we thought it best to have a conference with them and to settle this in an amicable way if possible and the suggestion was made then as to how we would do it.

Q. Who made that suggestion; didn't Mr. Dymond make the suggestion?

A. No, sir; if I am not mistaken it was made by Mr. Hatlested, the president of the Mississippi commission as to how it could be settled.

Q. Then, who answered him?

A. Several of us spoke up.

Q. You mean of the Louisiana commission?

A. Yes, sir, and the Mississippi commission. You know how it was; it was an argument as to how we should settle it.

Q. Mississippi, as I understand it, asked Louisiana how it was to be settled?

A. Yes, sir.

Q. Then you submitted your map showing—

A. The map had been submitted.

Q. During that meeting?

A. Before this thing came up; in fact I think Mississippi had examined the map before they met us in Louisiana.

Q. So, then the Mississippians tumbled your way?

A. Not at all, they had quite an argument before they did tumble.

Q. Well there was more wind than action.

A. They wanted more than we could grant them. We had considerable argument on the matter and we finally wound up by allowing them Isle à Pitre harbor.

Q. But they made us keep out of the marshes?

A. Yes, sir, certainly; we thought they were far enough in as it was.

Q. Didn't you think they were a little bit too far?

A. Yes, sir; considerably so.

Q. They were south of the deep water channel?

A. Yes, sir; considerably so.

Q. But you held them to it?

934 A. Yes sir. And we would have held them to it if not in an amicable way we would have held them to it any how.

Q. Well, after you got the neutral zone fixed, collared the Mississippians and dragged them out of the marshes—

A. No, we didn't drive them out.

Q. Wait until I get through. And sent them over east of Grand pass, then they came back with hats off and asked you to confer with them again with reference to the protection of that neutral zone didn't they?

A. Did they come back?

Q. In November.

A. You mean when Gov. Longino—

Q. Yes?

A. And Gov. Heard?

Q. Yes.

A. Gov. Longino communicated with Gov. Heard and asked for a conference between himself and Gov. Heard, and the commissions of Louisiana and Mississippi.

Q. Didn't he say to the governor of Louisiana that the Mississippians were circumscribed under the line that the oyster commission had agreed to and he wanted it modified?

A. I don't know that he mentioned anything in regard to the commission—

Q. He said they were dissatisfied?

A. No sir; he did not mention his commission. On the contrary I think he treated them with a great deal of discourtesy.

Q. I mean to say, didn't Governor Longino say to Governor Heard and especially to your commission, that the Mississippi people were not satisfied?

A. Yes sir. Now you come right to it.

Q. And that he wanted a modification?

A. Yes sir. And Governor Heard communicated with me and I called a special meeting and we had a conference with Governor Heard and Governor Longino and the minute we explained to Governor Longino and showed him the map and the situation he then asked me to excuse him, and Governor Heard and he withdrew from the conference and still left it to the two commissions.

Q. Well, now is it not true that a motion was made that all persons present at that meeting in November be excused except the two commissions and their attorneys?

A. Yes sir.

Q. And that by virtue of that motion that the governor and attorney general of Louisiana and the governor and attorney general of Mississippi retired?

A. Well, the motion was made by the governors.

Q. Governor who?

A. Governors Longino and Heard, and it was then—

Q. Wait a minute. I want you to be sure—

A. I am sure of what I am saying.

Q. Because, I don't mean to say that you wouldn't say what you believed—

A. I don't believe about that; I am certain—

Q. You are certain Governor Longino made—

A. Longino and Heard both said that the best thing they could

do was to withdraw; after they saw the maps and saw the situation of the boundary line and the neutral territory they had little or no more to say; then they decided to withdraw and asked me to excuse them and they submitted the whole matter again to the two commissions.

935 Q. Now wait. I want you to refresh your memory and answer me distinctly in the presence of your attorney, Mr. Dymond, if it is not a fact that at that meeting in November, no maps were exhibited during the time that the governors and attorneys of the two States were present?

A. No sir. Mr. Dymond exhibited the map. I called on him to exhibit it. Mr. Dymond didn't you exhibit the map?

Q. Was Governor Longino there?

A. Yes sir, and we explained it to him.

Q. When you were on the stand before, Mr. Breaux, I called your attention to this meeting that we are discussing now in November held at the office of the Chamber of Commerce in this city and in calling your attention to it now, for the purpose of showing the protest on the part of Mississippi or at least Mississippians and especially Mississippians interested in the raw oyster trade, do you not remember that Governor Longino asked that this neutral line which had been fixed in September be abrogated or materially modified, and he stated his reasons for doing so, that the Mississippians were dissatisfied with it. Do you remember that?

A. No, I don't remember that Governor Longino made any strenuous effort in regard to overthrowing the recommendations of both commissions either one way or the other.

Q. Did he not request a modification of that line and was not that the cause that called that meeting together to secure some changes in the neutral line that had been previously made?

A. Well, when the chair announced that it was ready for the question, Governor Longino did get up and stated the object of having communicated with Governor Heard in regard to this territory and that the Mississippi people were very much dissatisfied and that his object in having the conference was to see what could be decided in regard—or what could be done, in other words, in regard to the agreement made between the two commissions.

Q. In September?

A. Yes sir.

Q. Well, do you remember Mr. Dymond catechising the governor at some length while the governor was speaking; do you remember that?

A. I don't know that he did it at any great length; he asked him some questions, he asked him a few questions, yes sir.

Q. Do you remember after Governor Longino made his statement that Governor Heard made a few remarks?

A. A few remarks, yes.

Q. And Mr. Dymond made a statement as to Louisiana's claim?

A. Yes sir. I called on Mr. Dymond then to produce the map

which he did and explained — Governor Longino in regard to neutral territory that we had compromised on with Mississippi.

Q. Since we are reviewing again your testimony on this subject I want to ask you if you remember that I was there then as the attorney general of Mississippi?

A. Yes sir.

Q. And that I stated that in my judgment there was no real controversy between the two States within the meaning of the Constitution? Do you remember that?

A. No, sir; I don't remember.

Q. Do you remember that I stated that I thought the safer, easier and most satisfactory way to settle this matter would be to refer it to the legislatures of the two States and let them let each legislate and appoint a commission with power to choose an umpire and settle the line that way.

936 A. I cannot re-call exactly your words. I know you discussed the matter with Attorney General Guion; I can not exactly recall—

Q. Do you remember that is the substance, the view I took at that time?

A. No, I can't say that I can remember or think that it was my views.

Q. Well, can you say whether or not that I suggested—

A. As far as that is concerned I do remember that you mentioned some talk on the subject. You discussed it with Attorney General Guion, but as to the exact words of your discussion I can't—

Q. I don't ask you for the exact wording—

A. I am candid with you; I don't remember your words.

Q. And do you remember whether, without undertaking to correct my language for it, that I stated that in my opinion the agreement between the two commissions was not founded in law, that it might have been acting on an amicable line, but it was not binding on either State?

A. I remember of your making some kind of remark—

Q. Along the lines I have indicated?

A. I can't say positively that I remember you mentioned those words exactly.

Q. What line was it that those two commissions fixed for the neutral territory or neutral zone line?

A. Well, I would have to have a map to show you exactly. I think Mr. Dymond could answer that for you.

Q. I just want to get in the record what line they fixed?

MR. DYMOND: It is the area bounded on the waters by a line emerging from the mouth of Pearl river, south, to Malheureux point, thence extending eastwardly along the coast to Grand passage thence south along the coast through Grand pass to Sundown island thence northeasterly to the deep water channel between Cat island and Isle à Pitre, thence following the deep water channel back to the point of beginning at the mouth of Pearl river.

A. That was the neutral zone.

Q. Neutral territory. As I understand it, south and southwest of that line, in other words what we call the Grand marsh or Louisiana marsh was exclusively for Louisiana and north of this line was exclusively for Mississippi?

A. North of the deep water channel.

Q. North and east of the deep water channel?

A. Yes sir.

Q. That Mississippi boats having licenses from Louisiana could fish in Louisiana territory provided they marketed their oysters in Louisiana?

A. That is correct.

Q. And as I understand it—perhaps you understand it the same way—that Louisiana boats having a Mississippi license could fish in Mississippi territory and market their oysters where they please?

A. Yes sir.

Q. Now—

A. And both licensed vessels from both States could come into the neutral zone, Louisiana boats carrying oysters to Louisiana and Mississippi boats carrying oysters to Mississippi or Louisiana as they chose?

937 Q. In regard to the Mississippi boats, I think Mr. Breaux, you will recollect this, that where they operated in Louisiana they had to operate for some Louisiana employer.

A. They could not come in here like the Louisiana boats.

Q. Finally now, Mr. Breaux, you have no knowledge of any actual conflict or any crisis amounting to a threatened armed conflict between the sheriff and officers of Saint Bernard parish and the sheriff and officers of Harrison county Mississippi?

A. No sir; I have not.

Redirect examination.

By Mr. ZACHARIE:

Q. Prior to the meeting of the conference of the boundary commissions of the two States and of the two oyster commissions, you have stated that it was in contemplation by the Louisiana Oyster Commission to act against the Mississippi fishermen in this disputed territory. What did you propose to do; to drive them out by force or to arrest them?

OBJECTION.—Mr. McCLURG: That is objected to because he not only said that when he was on the stand before, but has stated it this morning in direct examination over and over again.

Q. I want to lead up to another question. What did you intend to do.

A. Why, I intended to do just exactly what I told Mr. McClurg; I intended to defend the rights of Louisiana.

Q. Mr. Breaux, I have asked you what physical acts you intended

to do; did you intend to warn them off or drive them off or to arrest them?

A. We had to drive them off. That is all there is about it.

Q. Suppose they would not be driven off?

A. Then we would have used arms and destroyed them; that is all.

Q. What would you do with them; what do you mean by destroying them? Do you mean arrest them or kill them?

A. That is a question that I can hardly state. It would have depended a great deal on the circumstances at the time being.

By Mr. McCLURG:

Q. You were rather disposed to shoot them if they resisted?

A. Why, certainly.

By Mr. ZACHARIE:

Q. Did you apprehend that any such contingency, that these Mississippians would call upon anybody for protection, if so who?

938 OBJECTION.—Mr. McCLURG: I object to that on the ground that it is leading; that it is without foundation in fact so far as the testimony shows anything to that effect. It is only to build up.

Q. If so who?

A. Why, if they had to call for protection, I suppose they would call on Mississippi to protect them.

Q. Did you apprehend they would do so?

A. I did, yes sir.

Q. What would be the consequence of that, if the authorities came to their rescue?

A. Well then the Louisiana authorities would have come to our rescue to help us out.

Q. What condition of affairs would that have produced?

A. Well it would have produced anything but an agreeable situation of affairs.

Q. I am not speaking about agreeableness, I am——

OBJECTION.—Mr. McCLURG: Mississippi objects to this course of prospective facts being brought out in this manner, as it is wholly irrelevant, impertinent and incompetent.

Q. Would it have brought about a condition of peace or war between the two States?

A. Very naturally it would have brought about a condition of war.

Q. Now, for what purpose were these conferences of the two boundary commissions and these two oyster commissions brought about?

A. For what purpose?

Q. Yes.

A. To try and avoid the difficulty of war, if possible.

Q. Then the agreement to the neutral zone affected what on this apprehended condition?

A. Well it affected it this much, that everything has been going on very quietly.

Q. What effect did this agreement upon the neutral zone have upon the prior condition? You stated a moment ago that it would have brought about a condition of peace or war. Now what effect did this agreement upon the neutral zone bring about?

A. Brought about the effect of peace.

Q. Peace until what time?

A. Well, until the decision of the Supreme Court of the United States.

By Mr. McCLURG:

Q. Wouldn't it be peace after the end of war?

A. It is no war exactly no more than the war now in court.

By Mr. McCLURG: I want it to be understood that we are still objecting to all this contemplated trouble to which the witness is testifying.

Q. Mr. Breaux, I want you to tell the commissioner how it is that you can testify, and I don't mean to say that you do not testify truly, but I want to get the solution of your testimony,—

I want to get at the kernel of it. You told me on cross-examination that prior to the 27th of September, 1902, when the joint commissions met here, that you knew of no crisis, you knew of no threatened armed conflict and you never have known of any existing between the sheriff and officers of St. Bernard parish and the sheriff and officers of Harrison county, Miss. I want you to tell me how it is in the face of that you say you anticipated war and prepared for it by arming your boats and sending them out there to drive out the Mississippians, or shoot them out if the emergency demanded it?

A. Well as regards any controversy between the sheriff of St. Bernard and Mississippi I still state that I am not aware of any; but if you want to know the reason why that we anticipated trouble, was from a simple fact that that law had just been made, the law to protect the oyster industry of this State, and this commission was appointed by the governor, and very necessarily it was the commission's duty to investigate every point we possibly could in regard to the oyster industry of Louisiana; and on our investigation and on the examination of the maps, we came to the firm conclusion that the Mississippi boats were fishing oysters in Louisiana territory. Consequently, being authorized by the house bill of the oyster law to have a patrol boat, we bought a boat, and we armed it to protect our oyster industry here in Louisiana against not only Mississippians, but any body else that would come and intrude on the territory.

Q. And you have no information at all have you, that any Mississippians, any Mississippi boat, or any Alabamian or Alabama boat or any other person or boat ever resisted the laws of the State of Louisiana.

A. I have no opportunity of knowing that. When I was appointed on this board I knew nothing about the oyster industry, nor I knew nothing about the disputed territory, nor Mississippi or St. Bernard boundaries either one or the other.

Q. After you were appointed and up to the time of your September meeting, or up to the time of the November meeting that we have been discussing here, I ask you to tell me, if you can, of any violation of your law or any resistance to your orders by any Mississippians or any Mississippi boat?

A. Why no they couldn't have any resistance for the Louisiana people never paid enough attention to the oyster industry to interfere with them in fishing in the Louisiana marshes.

Q. So previous to the two meetings of September and November, 1902, there had been no trouble between the two States?

A. Before the commission was inaugurated?

Q. Yes.

A. Not that I know of. I knew nothing about it.

Q. Answer me this question directly. Is it not true that the most of this commotion about what might happen was discussed by your own commission with the Mississippi commission in September and November? You never heard of any threat coming from Mississippians or the officers of Mississippi prior to that time to disregard your law and force themselves in to Louisiana?

A. Why no, they had no right to that, to take such steps as that; they had no right for Louisiana had not interfered with them so far as in regard to them fishing in Louisiana territory.

Q. Then don't you think you declared war when there was no gale sweeping from the Gulf?

940 A. If you understand me right, I don't think you can exactly state we declared war, but we anticipated—

Q. And prepared for war in time of peace?

A. Yes sir. But rather than to have war, we tried to fix it on an amicable plan, but if we couldn't—

Q. You told the Mississippians to come over here if you don't want war, we will give you a chance to avoid it?

A. No sir; we told them nothing of the kind. We only called for a conference, as I stated before, and we had an argument in regard to it. I don't think that anybody has any reflection to throw on the Louisiana commission in regard to that conference because—

Q. I am sure the Louisiana commission is perfectly satisfied with the action of the Mississippi commission?

A. I think the Mississippi commission is perfectly satisfied because we gave up more than what we first thought we were entitled to.

Q. The Oyster Commission of Mississippi was very much dissatisfied as you stated a while ago?

A. I want to say had the Oyster Commission of Louisiana thought that the Oyster Commission of Mississippi would not have been backed—their actions would not have been backed—by the authorities of Mississippi, I hardly think we would have called upon them for a conference.

Q. I will be as candid as you are with me. I do not think Mississippi fully endorsed their actions.

A. I am well aware of that fact myself.

Q. I think that your commission, under the leadership of a strong lawyer rather got the upper hand out of the Mississippians on that deal.

A. Well, we were very thankful to our lawyer for what he did, but at the same time the commission was there to act for itself, which it did.

By Mr. DYMOND:

Q. Mr. Breaux, as I understand it, you lived in the parish of Terrebonne before you were appointed on the oyster commission?

A. Yes sir.

Q. Is that parish located on the waters of the Mississippi river?

A. Yes, sir.

Q. About how many miles is it from the disputed territory by water, going around the coast. In a rough way?

A. I couldn't exactly tell you.

Q. How many miles is it by land?

A. About 110 or 112 miles by land.

Q. It must be more than by water?

A. Yes sir, I should judge it is.

Q. Had you any knowledge of the events pending in St. Bernard parish prior to your appointment on the oyster commission?

A. No, sir.

Q. Therefore, am I correct in understanding that in your testimony where you say that you knew of no conflict between the officers and sheriff of the parish of St. Bernard and the officers and sheriff of the county of Harrison, Miss.,—does that refer to the fact that you simply didn't know it or does it refer to the fact that you knew as a fact it didn't exist?

A. I didn't know it at all.

Q. You don't mean to say that affairs of that character did not happen in St. Bernard parish?

A. No sir.

By Mr. McCLURG:

Q. Notwithstanding you were president of the joint commission and of your own commission, you never heard it?

A. No sir.

Q. You have stated in this re-direct examination that at that time you lived in Terrebonne parish, west of the Mississippi river?

A. Yes sir.

Q. Can you say whether there are any oyster fields between the mouth of the Mississippi river and the mouth of the Sabine river?

A. Yes sir, there is.

Q. What is the distance, if you can say between the Mississippi river and the Sabine river?

A. I can't exactly say.

By Mr. DYMOND:

Q. In answering my questions Mr. Breaux, were you referring to the time prior to your appointment as president of the oyster commission?

A. Yes sir.

Q. And that was prior to all of these conferences?

A. Yes sir.

EXCEPTION.—Mr. McCLURG: Counsel for Mississippi excepts to the foregoing testimony of Mr. Breaux, on the ground that it is not in rebuttal, but testimony in chief, and to facts that he testified while on the stand heretofore.

NEMOURS H. NUNEZ, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Are you a practicing lawyer in the city of New Orleans?

A. Yes sir.

Q. Where do you live?

A. I live in the parish of St. Bernard.

Q. Were you born and raised in that parish?

A. Yes sir.

Q. Is that the parish within whose limits is included the area in dispute between the States of Louisiana and Mississippi in this case?

942 A. Yes sir.

Q. Are you a member of the Oyster Commission of Louisiana?

A. I am.

Q. You were a member at the time the oyster commission was created in 1902?

A. Yes sir.

Q. You were aware of the conditions existing in the parish of St. Bernard in the matter of the Mississippians fishing in what was considered the parish of St. Bernard prior to the creation of the Oyster Commission of Louisiana?

A. To a certain extent.

Q. Did you or did you not know that Mississippians were fishing in Louisiana prior to the creation of the oyster commission in 1902?

A. Well, I had been told so; I didn't know it of my own knowledge.

Q. Had you ever heard any remarks in the nature of complaints as to that fact?

A. Yes I did.

Q. Were you familiar with the provisions of the Louisiana oyster law as inaugurated in 1902?

A. Yes sir.

Q. Were you aware of the fact that it gave to the Louisiana Oyster Commission jurisdiction and control over the waters of the State of Louisiana?

A. Yes sir.

Q. Were you aware of the fact that this same law authorized this commission to maintain and operate an armed patrol boat to enforce the law of Louisiana in the waters of Louisiana?

A. Yes sir.

Q. Were you aware of the fact that an amicable agreement was made in September, 1902, between the Oyster Commissions of Louisiana and Mississippi creating a neutral territory pending the boundary settlement by decision of the Supreme Court of the United States.

A. Yes sir I was aware at the time.

Q. As a member of the Oyster Commission of Louisiana?

A. Yes sir.

Q. You took part in all their discussions?

A. Yes sir.

Q. In the event that this amicable agreement had not been made between these two commissions, what would you consider to have been your duty under the law and under the facts as they existed in regard to this disputed territory.

OBJECTION.—MR. McCLURG: Mississippi objects to this as suggestive and leading and incompetent. Let the witness state the facts and not his imagination as to what might happen as to a certain given state of facts not shown by the record.

A. We considered this territory the territory of Louisiana. It would therefore have been our duty to have arrested parties found fishing in that territory who were not fishing with a Louisiana license. I am sure that the commission—I am sure that I would have insisted upon the law being enforced, and if this agreement had not been entered into, it is possible that the fishermen of Mississippi would have resisted the officers of the commission, and trouble I am sure would have happened between the officers of the commission and the fishermen.

Q. Were you prepared for that trouble?

A. Well we necessarily had patrol boats armed. No patrol boats

under any circumstances could do any good in such open waters without being armed.

Q. Would you, as a member of the Oyster Commission of Louisiana, have felt it necessary to have carried out the Louisiana law to the extent of using your armed patrol boats in the event of resistance on the part of violators of the law in that territory?

OBJECTION.—Mr. McCLURG: Objected to as suggestive and leading.

A. Unquestionably.

Q. From your knowledge of the facts, what condition would have existed there in the absence of this agreement?

OBJECTION.—Mr. McCLURG: Objected to for the same reasons as above stated.

A. I really don't know, Mr. Dymond, what would have happened. Of course, as I say, it all depends exactly on how the fishermen of Mississippi would have taken it. It all depends on whether they would have resisted. The commission would have been forced to have arrested every fisherman from Mississippi. Now it all depends on whether or not they would have resisted.

Q. Did the Oyster Commission of Mississippi or its officers at the conference had on September 27th, 1902, in any way indicate what the action of Mississippi would be in the absence of an amicable agreement?

A. Well, there was something said in reference to that, but I will be frank, I always thought the trouble would be with the Mississippians and not with the Mississippi authorities. I do not consider I am sure that we for instance—of course I don't want to be understood as saying that I believe that the commission of Louisiana would have prepared an armed vessel, and, for instance, gone out to kill Mississippians; try to arrest Mississippians and engage in a fight. Of course, if we had gone out to arrest Mississippians and the patrol boat of Mississippi would have come in to assist them, of course we would have been forced to attempt to arrest them also, because we considered that Louisiana territory.

Cross-examination.

By Mr. McCLURG:

Q. How long did you say you had been a member of the Louisiana commission?

944 A. Since 1902, since its creation.

Q. When was it that your patrol boat was armed and prepared for action against Mississippi?

A. I don't think it was armed and prepared for action against Mississippi.

Q. Against Mississippi fishermen?

A. Not even that. It was armed to patrol the entire Louisiana coast and it could have been used against Louisiana fishermen just as well.

Q. When was that?

A. I couldn't say just exactly when it was, just a few months, I suppose, after the commission was created; I don't remember just exactly when it was.

Q. That boat was purchased and armed for patrol purposes under an act of the Louisiana legislature to protect your oyster industry in the State of Louisiana?

A. Well, it was especially—it was purchased especially for that coast—for that area which happens to be the disputed territory.

Q. It was not purchased and put into operation as patrol boat within the contemplation of the act authorizing it, purely in reference to the Mississippi boundary, was it?

A. I didn't look at it that way.

Q. Well, at the time of these meetings in September, and I believe I remember to have met you in the middle of November,—

A. Yes.

Q. I wish you would please state if prior to these meetings, you had any knowledge or reliable information as to any crisis or threatened armed conflict between the sheriff and other officers of St. Bernard parish and the sheriff and other officers of the county of Harrison, Miss.

A. As well as I remember, the sheriff of the parish of St. Bernard, sometime before September, 1902, sent out, as per instructions of the police jury—sent out some deputies in that territory, where they met quite a number of Mississippi fishermen, and they were informed by these deputies that they had to move or procure licenses from the parish of St. Bernard. As I understand it they said, the fishermen said, they wouldn't do it; that they would prefer fighting as I understand it before they would be driven off the territory. Some of them did not admit it was Louisiana territory but territory where they had been fishing so long. That was the first trouble I heard. I couldn't tell when that was.

Q. You are testifying to the same facts that Sheriff Nunez and his deputies testified last April?

A. Yes sir.

Q. Then, independently of that fact, is it not true that the action of the Louisiana commission in arming a patrol boat and in these meetings in September and November were rather in anticipation and for the purpose of avoiding any conflict, than to stop one already?

A. Well, there was certainly no actual conflict in that sense of the word, before that. Of course, I presume the commission believed that in time of peace prepare for war, and looked at it that way. Of course, as far as the agreement was concerned, I will be frank with you. I would prefer it to have closed up the entire territory until the decision of the Supreme Court.

945 Q. You have testified that you are a practicing attorney in the city of New Orleans. I want to put this question to you in connection with the issues here involved, and notify you to answer it in your own way: That if the State of Louisiana had determined by her legislature or by her supreme court, or by her State Oyster Commission and authorities of the parish of St. Bernard that the boundary between Louisiana and Mississippi lay in the deep water channel, contended for by Louisiana in this case, and of which, I am sure, you are familiar, would not the State of Louisiana have had power to have arrested, and dealt with in her courts persons violating her laws within that line.

A. The State would certainly have a right to make such charge against any parties violating any laws in that territory, yes sir.

Q. And if your armed patrol had arrested any person, Mississippian or other person violating the laws, they would have brought them before some tribunal of your State for trial.

A. Yes sir.

Q. And if your State should have followed the construction placed by her upon these acts fixing the boundaries of this State, do you not think, as a lawyer, that that defendant would have a right to have appealed to the Supreme Court of the United States?

A. Yes sir, unquestionably, if they filed the proper exception claiming the act was not done in the State of Louisiana.

Q. Then, is it not perfectly plain to you that the people have provided a civil government and preferred that questions of this character should be determined in that way, rather than by force.

A. Well, it certainly would be decided that way unless the fishermen refused to be arrested. That is the only case in which I anticipated any trouble.

Q. You have no knowledge at all of any fishermen resisting arrest before or after this?

A. No sir, nothing but wild remarks.

Q. Mr. Breaux whom you heard testifying, and who is president of your oyster commission, seems to have had a pretty strong idea about following the judgment and conclusions of the oyster commission. You are a member of that commission and I suppose have some voice in controlling its action, and I am not familiar with the rules that the commission have adopted in this matter, but is it not true that that commission or that patrol boat had no more authority than a sheriff or other officer who attempts to arrest a man who has committed a felony or misdemeanor and could not shoot them with any more right than a sheriff could shoot a fleeing criminal?

A. Certainly, it is the same comparison. The deputy inspector would be forced to arrest the man, if he could, and if the man resisted, like the sheriff he would be forced to kill him.

Q. Then it is true, is it not, that prior to the organization of this oyster commission, prior to purchasing their equipment of the armed patrol boat, prior to the meeting of the commissions in September

and November, and subsequent to that time, there has never been an arrest or attempted arrest.

A. There could not be since then unless the agreement was violated. Before, I don't know of any except that trouble as I stated before. But there was no resistance to any effort to arrest anybody and could not be unless the agreement was violated.

946 Q. I mean, as a matter of fact, there never has been, within your knowledge, any resistance to any attempt to arrest anybody? I understood you to say and I understood Sheriff Nunez to say in April, that they warned off fishermen and some of the fishermen protested, but what I am asking you is a question of fact whether there has been, before the dates I have mentioned or subsequently,—in other words, has there ever been, previous to this date, any attempt to arrest anybody that you know of.

A. Where? To arrest anybody where?

Q. In the disputed territory for violating the Louisiana law.

A. That is a question of fact. No one that I know of, except that our deputy inspector found there, I believe, at one time, some people from Alabama and had them to leave, that is all.

Q. He made no arrest?

A. No sir.

Q. Now, you heard Mr. Breaux's testimony with reference to what transpired at the meeting at the chamber of commerce in November 1902, which was about a month after the bill of complaint was filed in this cause, and you were present at that meeting as a member of the Louisiana Oyster Commission?

A. Yes sir.

Q. What was the object of that joint session of the two commissions?

A. You speak of the second joint session?

Q. Yes sir.

A. Well we had come to an agreement, that is I say we, the commissions of Mississippi and Louisiana, in September, and if I understand correctly the governor of Mississippi was dissatisfied with that agreement and he wanted us to change it so as to give Mississippi more so as to enlarge the neutral territory.

Q. Do you remember that any officer of Mississippi at that time insisted that this neutral zone was not legal and that within his purview there was no real conflict between the two States; that the matter ought to be referred to the legislature of the two States.

A. I remember something of that kind, but I was under the impression that the point brought up—I believe you were the gentleman that brought it up—was that Louisiana had no right to file suit, more than anything else. That is my impression of it. I don't remember so well though, there was so much said there.

Q. How old are you?

A. I am thirty-one years of age.

Q. Are you related to the sheriff?

A. I am his son.

Redirect examination.

By Mr. DYMOND :

Q. I understood you to say that in the purchase of the patrol boat and its being placed on this boundary line, that the patrol boat could have been used for any other purposes, was it or was it not a fact that the commission procured a temporary patrol boat to patrol this very locality prior to its acquisition of its permanent patrol boat.

A. Yes sir.

Q. Was or was there not any special necessity to patrol this particular disputed locality more so than any other part of the State.

A. There was more necessity for it there on account of the
947 dispute between Mississippi and Louisiana.

HENRY T. GOODLOK, a witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you reside ?

A. I live in Mobile.

Q. Alabama ?

A. Yes sir.

Q. Your family located there ?

A. Yes sir.

Q. What is your present occupation ?

A. Passenger conductor on the New Orleans division of the Louisville & Nashville railroad.

Q. Is that between New Orleans and Mobile ?

A. Yes sir.

Q. How long have you been in the employ of the Louisville & Nashville railroad ?

A. Since February, 1872.

Q. Wasn't it called the New Orleans and Mobile railroad then part of that time ?

A. It was first called the New Orleans, Mobile & Chattanooga railroad, and then it changed again to the New Orleans and Mobile railroad ; and then to the New Orleans, Mobile and Texas railroad and now it is the New Orleans & Mobile division of the Louisville & Nashville railroad.

Q. Have you been running continuously on that line since 1872 ?

A. With the exception of ten years that I was agent at Mobile.

Q. What were those ten years ?

A. Between 1880 and 1890.

Q. From 1872 to 1880 you were then running on this route between New Orleans and Mobile?

A. Yes sir.

Q. And from 1890 to date you have also been running on this route?

A. Yes sir.

Q. Now, have you, during that period of time, ever had occasion to experience or go through the storms that took place on the southern coast of the State of Mississippi?

A. Yes sir, I had on three or four occasions.

OBJECTION.—Mr. McClurg: The question and answer are both objected to and exception reserved, because it is not in rebuttal.

Q. Can you in any way designate about the years in which those storms occurred?

A. Well, we had a storm somewhere in 1872; three or four, 1872 I think; then we had a storm in 1882; then we had a storm in 1893.

Q. Were you in a position at the time of these severe storms to see the effect produced by these storms and more particularly the effect produced on the Louisville & Nashville railroad?

948 Mr. McClurg: So that I may not be tedious in repeating objections and reserving exceptions to every question of this character, it must be understood now that these objections and exceptions extend to all questions of this character of testimony, because it is original and not in rebuttal of anything that has been shown by the State of Mississippi, the testimony of Mississippi heretofore taken in no wise conflicting with or controverting the testimony introduced by Louisiana in chief as to the severe storms or their material effect upon the shores, coast, and islands involved in this suit.

A. I was.

Q. On the railroad property?

A. Yes sir.

Q. What effect was produced by these storms on this railroad property over which you were operating?

A. Well a storm would raise the water to such an extent that it would wash out our tracks.

Q. Would that suspend the operation of the railroad?

A. Yes sir; we had to suspend traffic until we repaired it.

Q. Did storms at any time affect any of the bridges in this particular section?

A. The storm of 1893 carried all of our bridges away, that is Bay St. Louis and Biloxi bay, the storm of 1893 carried all our bridges away and also West Pascagoula bridge; that was knocked all out of line and the embankment was all washed away between West Pascagoula and Scranton,—three miles of embankment.

Q. How was the track westward of Bay St. Louis through the marshes near Pearl river?

A. We suffered a great deal. We suffered by washing and all the embankments about Pearl river were washed out; and between Gulf View and Pearl river we had a bad wash all through those culverts. Those marsh lands between that, and the sea just carried it away.

Q. What sort of land was this? Was it the ordinary marsh land in the neighborhood of Pearl river?

A. Yes sir; where our washouts occurred was a bottom of marsh land but it was filled and raised you know, the track raised and—

Q. The filling and the marsh was washed out as the result of this flood?

A. The filling all washed out.

Q. Have you ever been through one of those storms yourself while out on the road?

A. I was in the storm of 1893 myself.

Q. Where was your train at the time?

A. My train at the time,—I got as far as Ocean Springs.

Q. Going which way?

A. I was coming south, or west you would call it.

Q. What was the general effect at the time as produced on you, was it a severe terrific storm?

A. It was a very severe blow you know and rain storm with it.

Q. What were the directions of the wind at the time?

A. As near as I can judge at that time it was a gale—a southeast gale.

Q. Was there any change as the storm progressed or later?
949 A. It continued in that velocity for about five or six hours and then it changed from due north right back again over the same direction.

Q. It changed to what? You say it started with a southeast gale?

A. It started as a south-east gale and then whipped around to the northward and blew right out again—blew the water right out again as fast as it came in.

Q. During the course of the storm, Mr. Goodloe, which part of it produced the greatest havoc and damage you refer to. Was it when the southeast wind was blowing or when—

A. When the gale from the south-east was blowing of course it brought the seas outward and carried the track and embankment away.

Q. Was there any damage done when the storm switched around to the north?

A. I think all the damage was done from the south-east.

Q. You say everything was carried away at that time and the water just went back?

OBJECTION.—Mr. McCLURG: I again note the exception above taken to this testimony.

Cross-examination.

By Mr. McLURG :

Q. Do you know Mr. Charles Marshall an employee or officer of the Louisville & Nashville Railroad Company ?

A. Yes sir ; he is superintendent.

Q. He has been introduced as a witness in this case and testified to the same storm, substantially the same facts that you have been called upon to testify. I don't find it just now but my recollection is that he has been connected with the Louisville & Nashville railroad and the corporation of which it is created of which you have spoken for a great many years.

A. Yes sir.

Q. Do you know how long he has been in connection with the road from here to Mobile. Under what other name was it called ?

A. I don't know, only the Louisville & Nashville, that is all I know. He has been connected with it since the time the Louisville & Nashville took hold of it. I knew he was agent here at New Orleans at one time.

Q. You don't know how long ago that has been ?

A. I don't know how long ago ; I don't know when he came into the service.

Q. As superintendent he has been familiar with the roadbed as well as with the operation of the road since he has held that position ?

A. Yes sir.

Q. You testified as to the effect of these storms upon the roadbed and their obstruction of the usual use, have you any knowledge as to what effect those storms have had upon the territory in dispute in this case ?

A. Not outside the damage to our own roadbed.

Q. You understand your road is not in controversy at all nor any effect upon your road is not in question ?

A. Yes sir.

Q. The point about which I desire to call your attention immediately is, can you say whether these storms, of which you have spoken, have had any material effect upon the configuration of the soil of Mississippi along the Gulf coast or Isle à Pitre, or the string of islands down there ?

A. I heard—

Q. Never mind what you heard. I am asking you about your own knowledge.

A. I know it overflowed—beyond Pascagoula it was overflowed and a man lost all of his ships out there.

Q. That is not within a hundred miles of this controversy. Now then let me come back to this controversy as referring to the territory reaching from the mouth of Pearl river along the deep water channel going out south-west of Cat island between Cat island and Isle à Pitre. I want to ask you if you have and personal knowledge

of any material effect that the storm of which you have spoken had upon the shore line of Mississippi or these marshes between Malheureux point and the Isle à Pitre to the south of Mississippi sound. Do you know anything about any change in the configuration of the Mississippi shore line, or the coast line, or the surface of those marsh islands down there.

A. No sir; there has been no change; not to my knowledge.

Q. You don't know of any change?

A. I don't know of any change.

Q. Whatever effect that you may know it has had on your road-bed, you know of none it has had on the water shore of Mississippi?

A. No sir; unless it washed in some of the embankments of the coast there; it washed in the embankment all along Waveland to Bay St. Louis.

Q. That is east of Pearl river?

A. Yes sir.

Q. You have seen that change?

A. Yes sir.

Q. Can you say how much change?

A. Some ten or fifteen feet in.

Q. Since when?

A. That was in 1893 it gave way, for ten or fifteen feet.

Q. You don't undertake to say though that any violent or material changes have been made in the water front of Mississippi?

A. No sir.

Q. Now, Mr. Marshall testified in answer to a question by Louisiana that the marsh territory in the neighborhood of Pearl river over which your road ran had been built up by accretions; and if I am not mistaken, he predicated one of the causes of that building up to these storm actions; at any rate that the road at many places where there were formerly trestling that he discovered, in the inspections now in building the road, bridges down there and far below the line of the track, and where there was once bridges and trestles there is now firm soil, and his observation was it had been largely due to the results of accretion; what have you to say about that?

OBJECTION.—Mr. DYMOND: Objected to on the part of the State of Louisiana, by counsel thereof, on the ground that counsel for the State of Mississippi has misunderstood the testimony of the said Charles Marshall and has incorrectly quoted the same to the witness.

951 A. We very frequently put in trestling work and then filled in afterwards. In building the road bed and filling in afterwards we built the embankments afterwards.

Q. I understood that and intended to so frame my question so as to avoid the answer you gave because my question conceded it. That notwithstanding your putting in trestling and filling in with foreign dirt that accretions along the marshes over which your road runs in the neighborhood of Pearl river and if I am not mistaken

Chef Menteur, those sections, whether or not it is true that those accretions brought in by storm actions have built up the soil rather than the soil having subsided.

A. Well that would amount to so little, it would not amount to much. The washing away of the embankment over the entire marsh, about the only building up of the marsh would be from the deposits caused by decayed vegetation gradually building up.

Q. No matter what the substance or causes, is it not true that that marsh territory does build up by accretions?

A. Only from what takes place from decayed vegetation. It does from—from decayed vegetation, it will to a certain extent.

Q. As a matter of fact it builds up whatever it is done by?

A. It is so little you can't observe it, only after a number of years probably.

Q. But in centuries some material accretions may be found?

A. Yes sir.

Q. Your road, as I understand it, crosses Pearl river near its entrance into Lake Borgne?

A. Lake Borgne?

Q. Yes.

A. Why I think the Rigolets—Lake Borgne is by the mouth of the Rigolets.

Q. Lake Borgne is?

A. Yes sir.

Q. What does the eastern mouth of Pearl river empty into?

A. I should call it the Mississippi sound.

Q. Well you are familiar with the territory along there, along your road and west of the Pearl river?

A. Yes sir.

Q. Have you ever noticed any subsidence of the marsh land in southeastern Louisiana, any evidence of it, that is the sinking of the land?

A. Sinking?

Q. Yes?

A. I am very positive; you know when we first put in our track we had to ditch it and throw the embankment up and had filling in there and put it down there. It was a long time before we could keep it up to the level because it would sink.

Q. Do you think the weight of the track of the road-bed had anything to do with that sinking?

A. Yes sir. In fact our track would sink to this day from four to six inches a year. Some portions of that track we forgot to raise.

Q. Geologists state there is four feet subsidence in a century. Have you ever seen any evidence to justify that theory in the neighborhood of where we are talking about?

A. No sir. I have dug a little under the crust of marsh there and it is very soft.

Q. You have reference to what Mr. Marshal said awhile ago and

counsel suggested that I had not correctly remembered his testimony. I will ask you these last questions the same as asked
952 him. And to the question whether geologists' theory that there is about four feet subsidence in a century and whether you have seen any evidence to justify that theory, Mr. Marshal answered: "I have not. I believe the contrary—oh, a moment please. What I believe is that there is an accretion to the surface of the marsh." Do you concur in that view?

A. I do.

Q. Mr. Marshal was asked by what means? He said: "By the rotting of vegetation, deposit of sand and drift from these overflows. If there is any general subsidence discovered by the geologists I don't know of anything about it. I have not observed any." So upon that point you concur with Mr. Marshal as to accretions.

A. Yes sir; only from a washing.

Q. And the sinking of the soil caused by the weight of the bed and the track?

A. Yes sir.

Q. And it does that until this day?

A. Yes, sir; it will give way.

Redirect examination.

By Mr. Dymond:

Q. Is it not a fact that you have to keep filling in that track all the time?

A. We have to raise our track in there a little every year or two. The last two or three years we have raised it, the last four years we have raised it and ballasted up the soil; at least about four inches and a half that track has settled.

Q. Is that due to the fact that underneath this crust you say the soil is very soft?

A. Yes, sir; it is a very soft mud. You take a pile and start it through that crust and you hit it one lick afterwards with a hammer and it will almost go out of sight in some places.

Q. If you had a pile of material loosely put up what effect in regard to settlement would time have on that pile?

A. After we once put down the pile?

Q. I am speaking of a pile of material; I am not speaking of a wooden pile. Suppose you had there heaped up a pile of sand, would it settle with time?

A. No sir; most all our settlements is caused from the weight of our trains and engines.

Q. I am not asking you anything about that I am asking you about a suppositious case. Suppose you had a pile of loosely put up material, would time have any effect in causing that to become more compact?

A. It wouldn't sink, I can tell you that; it would remain as it is.

Q. Would the surface be lower?

A. The surface would amount to the same thing. It wouldn't give away unless it had a very heavy weight on it.

Q. You don't believe that the material itself has any weight?

A. It has a slight weight, yes.

Q. If the material has a weight then, is there not more weight on the bottom material than on the top material?

A. There would not be probably weight enough to force it.

Q. How do you know, have you ever had any experiments made to determine whether there was or was not any settlement in that section of the country?

953 A. Well only from my experience in seeing piles driven.

Q. I am speaking now of the general surface of the Louisiana marshes which you cross just before you come to Pearl river and which you keep on crossing for many miles going westwardly. Has there been in your experience any change in the surface of that marsh?

A. There has not.

Q. Is it any higher to-day than it was 20 years ago, or lower to-day?

A. It may be some two or three inches higher. It may be, of course, from the taking place of decayed vegetation and what little sand that had washed off from our track, or something of that sort.

Q. Would you be prepared to dispute the statement of geologists that this whole section of the country loosely made by deposits of the alluvium from water, is gradually settling and becoming more and more compact as ages go by?

A. I believe it is.

Q. You believe it is?

A. Yes sir.

Q. Therefore, was I correct in understanding you to say that you believe there has been no change, or was I correct in understanding you to say that you simply had observed no change?

A. It must be made land because I have got a stack of shells, clam shells, that I got at Gulfport that was dug out twenty-two feet, at the depth of twenty-two feet. I know when there were boring a well right here in Lafayette square at a depth of about a hundred feet they cut out through cypress logs.

Q. Now, this coast that you are speaking about of having washed ten or fifteen feet, are you referring now to the high bluff coast which forms the southern shore of Mississippi, after you leave the marsh, east of Pearl river?

A. Yes sir. That was caused by the sea, you know, washing the banks beating up against the banks and washing the banks in there.

Q. In any instance, did the washing out go so far as to damage the public road that runs along the beach?

A. Yes; they had to repair the road all along from Waveland up nearly to Bay St. Louis, and also Pass Christian.

Recross-examined.

Mr. McCLURG :

Q. If within the short time that you observed this delimitation of the shore by storm action the same effect has been produced or the same ratio of shore front has been lost for a hundred years or two hundred years, what do you have to say to about the Mississippi shore line having been down in the neighborhood of Isle à Pitre some time ago?

A. That I can't tell you.

Q. The truth is you do not undertake to testify scientifically about geology and storm actions and the like of that?

A. No, sir.

Q. You just tell what you have observed?

A. Yes, since I have been on the line.

Q. And when Mr. Dymond asked you if you were ready to deny what geologists have said, you in fact don't know what they have said about it?

A. No, sir.

Q. You will neither confirm nor deny Mr. Geologist?

A. No, sir.

954 CAMPBELL K. DE LAPPE, a witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you live?

A. I live in New Orleans.

Q. At what address?

A. 530 Esplanade avenue.

Q. How old a man are you?

A. I am 53.

Q. What is your present occupation?

A. I am agent for the East Louisiana railroad.

Q. Were you at any time connected with the New Orleans, Mobile & Chattanooga railroad, or what is now commonly known as the Louisville & Nashville railroad?

A. Yes, sir.

Q. When was that?

A. From 1872 to 1881.

Q. Where were you located at that time?

A. I was two years in Mobile; one year in New Orleans and six years at Bay St. Louis.

Q. Were you ever on the road at that time in connection with the passenger business or anything of that sort?

A. Well, I travelled backwards and forwards from place to place.

Q. What was your exact occupation at that time ?

A. Well, at the time I was at Bay St. Louis I was agent.

Q. You were agent for the road at Bay St. Louis ?

A. Yes, sir.

By Mr. McCLURG :

Q. Do you mean local station agent ?

A. Yes, sir.

By Mr. DYMOND :

Q. And when you were at Mobile ?

A. I was operator.

Q. And in New Orleans, operator also ?

A. Yes, sir.

Q. You never have been a conductor, or anything of that sort on the road ?

A. No, sir.

Q. Have you ever had occasion to know whether during that period of time, from 1872 to 1881, as I understand, there were any storms affecting the Louisville & Nashville railroad on that occasion ?

A. Yes, sir I recollect two especially very severe storms, one in 1873 and one in 1877.

Q. Where was the worst effect of those storms felt, if you have any recollection ?

A. Well, the storm in 1873 tore down or washed away all of our East and West Pascagoula bridges. I remember that I was operator at Mobile at the time ; that was in 1873. In 1877 there was a terrible storm—I don't know I think it was east of Mobile or at Bay St. Louis, but I was agent at Bay St. Louis at the time and I was in New Orleans at the time ; the storm occurred in the afternoon, and I was on the train that was tied up all night, I think, at Lake Catherine. I am not positive.

Q. Was that in the marsh out there this side of the Rigolets ?

A. Yes, sir ; just west of the Rigolets, twenty-five miles from here, this side of the Rigolets.

Q. Were you ever in what is called Louisiana marshes, south of Mississippi shore, south of Bay St. Louis,—have you ever been out on any fishing trips out there ?

A. No, sir.

Q. You have never been in that locality ?

A. No, sir.

Q. Where your train was stopping that night, was that the same character of marsh that you generally find around New Orleans ?

A. Well, it was a marsh like we have all around south of here I presume. There was a hurricane, and it drove the water up over the track and washed all of the bridges and culverts and we couldn't get any further, and we stayed there all night until ten o'clock the next day.

Q. Did you pass that night through the storm?

A. Yes. It was a through train which left here at eight o'clock, I believe it was, or seven.

OBJECTION.—Mr. McCLURG: Counsel for Mississippi here notes the same objection and excepts to the testimony of Mr. de Lappe as to the other witnesses examined, on the ground that it is not in rebuttal, that it is the same as the testimony taken in chief along these lines.

Q. Did you get any opportunity to see, with your own eyes, the strife of the elements on the occasion of that storm in 1877? Did you get out of the car?

A. No, sir. Nobody got out of the car; we had to stay inside; it was very severe.

Q. What effect did it produce in your immediate locality, any effect at all, where your car was?

A. We were surrounded by water.

Q. Any washing of the road-bed?

A. Before and behind us, yes.

Q. You were cut right off there?

A. Yes, sir; fortunately there was a construction train on the side that helped us out.

Cross-examination.

By Mr. McCLURG:

Q. Mr. de Lappe you have no personal knowledge of any material change or changes in the configuration of the Mississippi shore or of the line of the marsh from Malheureux point to Isle à Pitre, have you, caused by storms?

A. Well, I have not been over on that road for nearly 22 years, with the exception of once or twice.

Q. I am not talking about the railroad.

A. I know, but I have not been over on the coast but once or twice.

Q. During all of your knowledge, do you know of any material change in the Mississippi shore line?

A. You mean beyond the marshes?

Q. From Pearl river to Pascagoula river?

A. I know on two different occasions the Bay St. Louis driveway has been washed out almost to destruction. That is where my folks live.

956 Q. That is the only place you can speak of from your personal knowledge?

A. Yes, sir.

Q. And so far as any changes in the configuration of the marshes or south side of the Mississippi sound you don't know?

A. No, sir; I can't say.

Q. Have you any personal knowledge as to whether the marsh

lands east and west of Pearl river along the road have been subsid-ing or building?

A. Well, as I stated I have only been on the road about three times in twenty-two years. Of course, I couldn't—

Q. I see; that is all.

E. J. BELLOCQ, a witness recalled on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. You are the same Mr. Bellocq who has previously testified in this case and are a photographer?

A. Yes, sir.

Q. Will you please look at this map, which for purposes of identification we will call map No. 60 and state whether you photographed that from the original appearing in Senate Documents, first session, 26th Congress, vol. 4, 1839, 1840?

A. Yes, sir.

Q. Will you please look at this map, which we will now for purposes of identification, call map No. 60 "a," and state whether that is an enlarged photograph of the area in dispute, in this case?

A. Yes, sir.

Q. Now, Mr. Bellocq, will you please look at this photograph, which we will call map No. 61 and state whether you photographed it from the General Land Office map of the United States of 1887, which is now before you?

A. Yes, sir.

Q. Will you please look at this map, which we will now call 61 "a," and state whether it is an enlarged photograph of the disputed area as taken from map 61.

A. Yes, sir.

Q. Other than being of a different size, are these maps true and correct photographs of the originals which you have photographed?

A. Yes, sir.

Cross-examination.

By Mr. McCLURG:

Q. What is the date of the map from which you made these photographs?

957 A. 1887.

Q. By whom was it made?

A. By Mayo, civil engineer.

Q. Of what?

A. Chief Drafting Division, G. L. O. I don't know—what is that Mr. Dymond?

Mr. DYMOND: General Land Office.

Q. That map is made by the United States?

A. Yes.

Q. I will call your attention to the originals of maps 61 and 61 " and ask you if you discover upon this map any sailing line out the mouth of Pearl river and between Cat island and Isle à Pic around into Chandeleur sound marked on the map?

A. I don't know anything about any sailing line. All I know to make the prints of those.

Q. You are familiar with what maps indicate by their coloring and the position that the islands and the land are on them? For instance, you notice that Ship island and Cat island on the map that I am now showing you are printed white, the same color as Mississippi is above?

A. Yes, sir.

Q. Do you understand that that white coloring of these islands means that they are of the same jurisdiction of Mississippi?

A. Yes, sir; they are about the same color.

Q. Do you understand they are considered as belonging to Mississippi?

A. Well, if the map says so I have to consider that to.

Q. Now, look at Grand island, as on this original map, consider its coloring and position to the State, would you say this map makes assigned Grand island to Mississippi or Louisiana or to either?

A. I don't know anything about what they say. All I know made the negative and I make the prints off of it.

OBJECTION.—Mr. McCLURG: The testimony of Mr. Bellocq is objected to and exception now reserved, on the ground that the maps proven by him are in the nature of original and not rebuttal testimony.

SAMUEL F. HEASLIP, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. Where do you reside?

A. New Orleans.

Q. Where were you born?

A. I was born in England.

Q. Have you ever lived in the State of Mississippi?

A. Yes, sir.

Q. What is your present age?

A. I am fifty-six years old.

Q. How long and from what period did you live in the State of Mississippi?

958 A. From 1851 to 1866.

Q. What year were you born in?

A. I was born in 1848.

Q. Have you ever occupied any official position in Mississippi?

A. Oh yes.

Q. What positions?

A. I was quarter master general for the State of Mississippi at one time.

Q. What other official position did you occupy?

A. I was justice of the peace in Mississippi and mayor of a town there.

Q. Which town?

A. Pass Christian.

Q. How long were you mayor?

A. I don't remember; for several years; a number of years; longer than I wanted to be.

Q. How many terms?

A. I don't know. I think I quit in the middle of one. Two or three, I don't remember just exactly.

Q. When did you first go to Pass Christian?

A. In the year 1851.

Q. About 1851?

A. Yes sir.

Q. Then you were about four years old?

A. Three.

Q. Do you know this territory in dispute, or which extends from Isle à Pitre westward towards the Mississippi river?

A. Fairly well.

Q. What is the territory generally known by, along the coasts of Mississippi?

A. Well, I have always known it and heard it spoken of as the Louisiana marshes.

Q. Did you ever hear it spoken of by any other name, as Grand marsh or any other name than the Louisiana marsh?

A. I never heard the term before "Grand marsh" applied to it.

Q. How many years did you reside at Pass Christian?

A. Continuously from 1851 to 1866. And off and on from about 1874 to 1898 I reckon.

Q. Do you know what was generally considered amongst the people along that coast as the boundary line between Louisiana and Mississippi?

A. I never heard the question discussed.

Q. Do you know how it was considered by any one who ever mentioned anything about the boundary line?

A. I could only speak on that point in a general way. I never heard those marshes referred to, the country, say from Pearl river east, I think the eastern end — those marshes, is about south of the middle of Cat island, as well as I recollect the points of the compass along there, and I never heard them spoken of or referred to except simply as the Louisiana marshes. The Isle à Pitre was, in the be-

ginning, as I understand it, the property of Henry Leovy, who acquired it in some way. Mr. Gilmore owns that property now.

Q. You have heard the fishermen along that coast speak of territory?

A. I would not confine it to the fishermen alone that I hear refer to it.

Q. When did you first visit this territory?

A. I suppose when I was a boy, a little fellow 8 or 9 years old.

Q. And how often, about, have you visited it since, off and on?

959 A. That is hard to say, I can't tell you that.

Q. Often?

A. Oh yes. I suppose a couple of hundred times or more.

Q. Have you ever noticed any changes in that territory occasioned by natural causes, storms etc.

A. I don't call that natural causes. Those are abnormal conditions. I have noticed continual changes from time to time brought about by storms.

Q. Can you tell us from what changes they have been brought about?

A. For instance, a bayou would take a cut through, that has its head on the mainland, would cut through right on. The best way to illustrate that would be, for instance, to take Cat island with its light house standing on a spit. I have seen that light house standing on an island by itself; then I have seen it connected to the mainland. That same condition prevails throughout those marshes.

Q. Have you ever seen what you call Coquille disappear?

A. Those shell keys?

Q. Yes.

A. That is always the case after a storm, but it would not be necessary to have a storm to change those. A very heavy easterly or south-easterly wind would make them disappear from the surface of the water; and they are built up by southwesterly winds.

Q. Do you know where the deep water is that comes out of the mouth of East Pearl river, that runs out to the southward of Merrill's light?

A. It runs out somewhat midway between Merrill's Coquille and Isle à Pitre.

Q. Does it run between Isle à Pitre and Cat island?

A. Oh, yes sir.

Q. Have you ever heard that spoken of as the boundary line between Louisiana and Mississippi?

A. I can't say that I have. I have only heard that spoken of in the South pass and then not in a very conclusive way.

Q. Have you ever heard the question of the boundary line discussed before the institution of this suit.

A. Never. It seemed to be the general accepted conditions that those marshes constituted the boundary line; that is from any I ever heard speak of it.

Q. You mean to say that the extreme eastern limit of these marshes constitute the boundary line?

A. Well, yes, taking the marshes in generally as they present themselves.

Q. Then you don't know or never heard it stated that the boundary line between the two States was that deep water channel from the mouth of East Pearl river.

A. Oh, no.

Q. Have you ever been in the interior of these marshes from time to time.

A. I have, indeed.

Q. Have you ever noticed changes between your visits?

A. Well, some changes. Some of these bayous would cut through, and some close up just according to the way the drift would settle and the direction of the strongest force of the storm. For illustration: A southeast storm would leave one condition of affairs, a north east would produce an entirely different condition of affairs. Consequently the results left would be different. The conditions that would be built up by a southerly storm would be destroyed by a north-easterly storm.

960 Q. How about a north-western storm?

A. That wouldn't do much because that would blow the water all out, and at the same time a north-westerly is a storm of no consequence whatever; that is immediately following the vortex of the south-east or north-easterly storms. And in that particular instance it always carried with it a great deal of damage for the reason that the water is then very high, and it makes it recede with such rapidity that it would create as big washouts as a south-easterly or north-easterly storm.

OBJECTION.—Mr. McCLURG: The testimony of this witness, except as to what he has testified respecting the Grand marsh appellation is objected to and exception now reserved on the ground that it is testimony in chief and not in rebuttal.

Cross-examination.

By Mr. McCLURG:

Q. How long have you lived in New Orleans?

A. I have lived off and on here since 1866.

Q. Most of the time here, I take that to mean?

A. A great deal.

Q. What time was it you served as quartermaster general in Mississippi?

A. When Henry was—what position did Henry occupy and Ben Riggs? Ben Riggs was major general.

Q. Henry was adjutant general?

A. Yes, Ben Riggs was major general and I was quartermaster general.

Q. I was trying to get what year?

A. I forget the year.

Q. About 1880?

A. Somewhere around there. I think Morrill appointed me.

Q. He was governor at that time?

A. I think he was, I am not sure.

Q. Or Lowry?

A. That is right; he was governor.

Q. You stated that you had always known this territory between Malheureux point and Isle à Pitre as the Louisiana marsh. Is it because of that appellation that you consider it Louisiana territory, because it was known as or called the Louisiana marsh?

A. Undoubtedly I stated that fact.

Q. Well the eastern tier of parishes in this State are called Florida parishes. Do you think there is anything in that tendency that Florida has any claim upon them now?

A. No, sir, because the designation of parishes are sufficient. That is the distinction that the term applies there.

Q. Yes, but these are marshes?

A. Yes, but Florida is Florida.

Q. Cut off Louisiana in one and Florida in the other, what do you to indicate—

A. I have a great deal.

Q. I believe you stated that you never heard the boundary cussed one way or the other?

A. Yes, sir. I did not.

Q. You never heard the deep water channel or any other discussed as marking the boundary between the two States?

961 A. I have not.

Redirect examination.

By Mr. ZACHARIE:

Q. You own property in the State of Mississippi? And if what?

A. Yes sir.

Q. Where?

A. In Harrison county.

Q. At what place?

A. In Pass Christian, some of it.

Q. Did you ever hear any question raised, and if so, what, about these Louisiana marshes being a part of the State of Louisiana or the parish of St. Bernard. How were they considered?

A. The marshes?

Q. Yes.

A. Well I don't know that anything I could say on that point would be of any material use to you, because I never heard the question discussed in any way before the territory involved acquiring

a little market value, its real oyster value, and then I don't think it was discussed from an intelligent standpoint.

Q. You never heard it, when it was spoken of, before that time, as belonging to Louisiana or Mississippi?

A. I think it was a matter of extreme indifference to everybody who it belonged to.

OBJECTION.—Mr. McCLURG: This re-examination is objected to on the same grounds as stated in the foregoing objection to the testimony taken this day.

OFFER.—Mr. DYMOND: In connection with the testimony of Mr. Ernest J. Bellocq, counsel for the State of Louisiana now tenders to the State of Mississippi vol. 4, 1839 1840 Senate Documents, first session, 26th Congress, and offers in evidence as an extract therefrom beginning at page 163 the report of John Wheeler, engineer, to his excellency N. C. Nutt, governor of the State of Mississippi, December 13, 1839, being a survey of the sea coast of the State of Mississippi, and tenders to counsel for Mississippi a copy of said extract the said extract to be known as Document No. 73; and in connection with the testimony of Ernest J. Bellocq and the offer of this document, counsel for the State of Louisiana now offer, produce and file in evidence a photographic copy of the map or chart of the sea coast of the State of Mississippi, executed by authority of the State of Mississippi, surveyed in 1839, John Wheeler, engineer, accompanying said Senate document, to be known as map No. 60; and a photograph of the disputed area on an enlarged sketch, to be known as map No. 60, a photographic copy of which said maps are now tendered to the counsel for the State of Mississippi.

962 OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence map of the State of Louisiana, prepared by the Department of the Interior, General Land Office of the United States, Honorable William A. J. Sparks, Commissioner, dated 1887, a photographic copy of which, marked map No. 61, and a photograph of the disputed area on a-enlarged sketch, marked map 61—"a" being now offered, produced and filed in evidence, and copies thereof tendered to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a certified township plat, map of township 10, range 15 west, to be marked as "Exhibit Louisiana 1," copy whereof is now tendered to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a blue print of the official map of Hancock county, State of Mississippi, with the certificates thereto attached, showing its authenticity and the circumstances under which the original was made to be known as map No. 62. To be understood that counsel for the State of Louisiana will furnish counsel for the State of Mississippi a copy of the same.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further

offers, produce and file in evidence a copy under certificate of John H. Metcalfe, Secretary of Commerce and Labor, Department of Commerce and Labor, Washington, D. C. a certified copy of a plan of the coast, of part of West Florida and Louisiana, including the River Mississippi from its entrance as high up as the River Yazous, surveyed by George Gauld, M. A., for the right honorable the board of admiralty, 1778, being map of the British admiralty, to be known as map No. 63, a certified copy thereof being tendered to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence the following certified copies of patents issued by the State of Louisiana to land in the disputed area, being known as follows: together with the certificates thereto attached and certified copies thereof being handed to counsel for the State of Mississippi, to-wit:

Patent No. 726 to Mary C. Gordon, December 27, 1853, marked Document No. 74.

Patent No. 7850 to W. A. Gordon; certificate dated July 5th, 1854, marked Document No. 75.

Patent No. 1035 to Louis Palms, July 31, 1861, said document being marked No. 76.

963 Patent No. 144, certificate dated Nov. 28, 1864, to A. W. Mora, assignee F. M. Stevens, being marked Document No. 77.

Patent No. 143 to A. W. Moss, certificate dated December 8, 1864, being marked Document No. 78.

Patent No. 117 to Henry McGuinn, certificate dated January 9th, 1865, marked Document No. 79.

Patent No. 193 to Richard Pindell; certificate dated March 20, 1867, document being marked No. 80.

Patent No. 706 to J. C. Gilmore; certificate dated March 15th, 1887, being document marked No. 81.

Patent No. 750, to J. C. Gilmore; certificate dated April 7th, 1887, being document marked No. 82.

Patent No. 751, to J. C. Gilmore; certificate dated April 7, 1887, being marked Document No. 83.

Patent No. 761, to W. V. Gilmore; certificate dated April 11th, 1887; document being marked No. 84.

Patent No. 870 to W. V. Gilmore; certificate dated June 22nd, 1887, being document marked No. 85.

Patent No. 961 to Samuel L. Gilmore; certificate dated September 12th, 1887, being document marked "No. 86."

Patent No. 1039 to J. C. Gilmore; certificate dated November 7th, 1887, being document marked No. 87.

Patent No. 1038 to J. C. Gilmore; certificate dated November 7th, 1887, being document marked "No. 88."

Patent No. 1040 to J. C. Gilmore; certificate dated November 7th, 1887, being document marked No. 89.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a copy of the railroad commissioners' map of Mississippi issued by authority of the Railroad Commission of Mississippi by Rand, McNally & Co., 1902, to be known as map No. 64, a copy thereof being presented to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana having obtained from the General Land Office at Washington, D. C., the following maps—State of Louisiana, Department of the Interior, General Land Office, William A. J. Sparks, Commissioner, 1886; State of Louisiana, Department of the Interior, General Land Office, J. A. Wilkinson, Commissioner, 1879,—now offer said original maps as a substitute for the photographic copy thereof represented by maps 35 and 36, and withdraw the photographic copies thereof heretofore offered, and which are given the same numbers as the photographic copies of the original offered.

964 OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a copy of act No. 65 of 1884 of the legislature of Louisiana, authorizing the attorney general to institute proceedings on behalf of the State of Louisiana, to be known as Document No. 90, a copy thereof being given to the State of Mississippi.

OBJECTION.—Mr. McCLURG: Counsel for Mississippi objects to all of the documentary evidence, including the maps introduced, and excepts to the same on the grounds heretofore stated, that such testimony is testimony in chief and not in any sense testimony in rebuttal of any new matter brought out by the State of Mississippi.

Adjournment of Proceedings.

At this stage of the proceedings a hearing was adjourned by the commissioner until August 26th, 1904, to be resumed at the same time and place.

Resumption of Proceedings.

NEW ORLEANS, August 26th, 1904.

Pursuant to adjournment the hearing was resumed this day at the same time and place.

Present: Hon. Walter Guion, attorney general for the State of Louisiana.

Messrs. John Dymond Jr., and F. C. Zacharie associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

EUGENE AHERN, Jr., witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I live at Biloxi.

Q. In the State of Mississippi?

A. Yes sir.

Q. What is your business at present?

A. My business at present, well I have been working at race horses for a couple of years, but all before that I have been in the oyster business pretty much of the time.

Q. Where were you born?

A. I was born in Baton Rouge, La.

965 Q. Have you lived any length of time in Biloxi, Mississippi?

A. I have lived there, I suppose, thirteen years. I would leave there and go away for a couple of years, and since the first time I went there it has been about thirteen years ago.

Q. How long were you engaged in the oyster business in Biloxi?

A. I suppose about five years.

Q. From what time to what time?

A. I couldn't say whether it was—how that was—because sometimes I have been in the oyster business and sometimes in every other camps.

Q. When did you first start in the oyster business?

A. I suppose it has been the year of the storm.

Q. In 1893?

A. Yes, sir.

Q. When did you leave the oyster business?

A. Well, you see, that is a thing I can't tell you exactly on account of—

Q. When was the last time you were in the oyster business?

A. The last time I was in it—about a month—that was in the month of February?

Q. This past year?

A. Yes, sir. I stopped working here and went there and worked a month and have not done any work since.

Q. Are you the Mr. Ahern who was a member of the firm of Ahern & Wentzell?

A. Yes, sir.

Q. Were you a member of the firm, or rather when did that firm first begin business?

A. That firm only stayed out there one year. I don't know exactly—it was the year before last.

Q. You started about in the month of October, was that in October 1902?

A. Yes, sir. No, it was October, 1903, was it not?

Q. Was it October last year?

A. That is right October 1902.

Q. Now don't you think it may have been in 1901?

A. I was out there but it was not the same business. I was out there for two years, you understand. The first year I was running a bum-boat; what they call a bum-boat.

Q. Just one moment. When you speak of out there you refer to Three Mile bayou?

A. Yes sir.

Q. In the Louisiana marsh, in the disputed territory in this suit?

A. I don't know anything about it being the Louisiana marsh, disputed territory, or anything like that.

Q. Is that the Three Mile bayou that is—will you please look at this map No. 59 which is now shown to you and Bay St. Louis is pointed out to you on the map and Isle à Pitre and Three Mile bayou on the coast between Malheureux point and Isle à Pitre, and state whether the Three Mile bayou, about the centre of the map, is the Three Mile bayou to which you refer?

A. Yes; that is it right there; that is the Three Mile bayou.

Q. Now you were a member of the firm of Ahern and Wentzell that did business there at Three Mile bayou?

A. Yes sir.

966 Q. You say that you first did business in a bum boat?

A. Yes sir.

Q. Did you afterwards erect a camp, cabin?

A. House? Yes, sir, a camp.

Q. What did you use as a place of business after the year when you had no business in a bum boat?

A. The next year I put up a house.

Q. Was that house put up on the bank or near Three Mile bayou?

A. It was put right on the land, the marsh.

Q. That house, I believe, is still there?

A. I think it is, if it has not blown down in the last couple of months.

Q. What sort of a business did you conduct in that house?

A. We ran a regular grocery business.

Q. Did you also, or did you not, run a bar-room business?

A. We sold liquor, yes sir. We didn't run any bar-room business.

Q. Did you have a liquor license from the United States?

A. Yes sir.

Q. Will you please look at these bills, which are to be known as Documents Nos. 90, 91, 92, 93, 94 and 95, and state whether or not you recognize them to be the bill heads of the firm of Ahern & Wentzell?

A. I don't know anything about the 91, 92, 93 and 94 and 95, and all like that.

Q. Do you understand the question; I have got them numbered, do you understand?

A. Yes sir; I thought you meant the years. Yes, sir; I recognize the bill heads all right enough; I know they are the same ones.

Q. Were those bill heads used by your firm of Ahern & Wentzell at Three Mile for the business you did there?

A. Yes sir.

Q. You will notice that *that* one of these bill heads, Mr. Ahern on which a letter is written, bears date of April 15th, 1902; and another one bears date of November 23rd, 1901. Will you please state whether or not you were in business at Three Mile—

A. We have wrote that—

Q. Just wait until I finish the question first. Will you please state whether or not you were in business as Ahern & Wentzell at that point in 1901?

A. No, sir; I was not. I was not in business at all. That was just a mistake putting one on there; it was two, 1902.

Q. You got a United States internal revenue license—

A. Yes, sir; I don't know whether I have it yet.

Q. For the conduct of your business there?

A. Yes, sir.

Q. That license was sent to you at Biloxi, Miss.?

A. Yes, sir.

Q. It came in an envelope addressed from the United States Government?

A. Yes, sir.

Q. Will you please look at that envelope which is now, for the purpose of identification, marked "Document 96" and state whether or not you recognize it as being the envelope which contained the license sent to you by the Treasury Department of the United States?

A. I tell you I can't remember no such thing as that; I don't remember what kind of envelope it was; it must have been the other one—

Q. Will you please notice the postmark and date of the document and state what year it is?

A. You mean that?

Q. Yes, sir.

A. Well, I don't know whether that is the same time or not.

Q. Please answer the question. I want to know what this is?

A. That is New Orleans, October 30th, 3:30 p. m. 1901.

Q. Does that change your conclusion as to whether you were in business in 1901?

A. I tell you I don't remember exactly, but I thought it was the winter before last.

Q. Would your recollection be influenced by that document. Of course we are trying to get simply the best of your recollection?

A. I don't think I was in business at that time, but it must have been that this is the very envelope.

Q. With your memory refreshed by an examination of this envelope, being Document No. 96, are you or are you not now prepared to say that you were or if you were not in business there in October, 1901?

A. Well, I think yes. It must have been in 1901 when we started.

Q. What was the character of the business that you did?

A. Well, I sold groceries and liquors.

Q. To whom?

A. To the boatmen who caught oysters.

Q. They were fishing oysters there?

A. Yes sir.

OFFER.—MR. DYMOND: Counsel for the State of Louisiana offer, produce and file in evidence said Documents Nos. 90, 91, 92, 93, 94, 95 and 96 in connection with the testimony of the witness.

By Mr. ZACHARIE:

Q. At the time you had that store on Three Mile bayou, was there not another store kept just above you.

A. Yes, there was one fellow that started up there but he didn't stay long.

Q. You remember what his name was?

A. Yes.

Q. What was it?

A. His name was Billy Master.

Q. How do you spell it?

A. M-a-s-t-e-r.

Q. What year was that in?

A. That must have been in the year 1901 or 1902.

Q. Where was he from; where did he reside?

A. He was from Biloxi.

Q. You are sure he was from Biloxi and not from Hattiesburg?

A. He was not from Hattiesburg.

Q. He was from Biloxi?

A. Yes sir.

Q. You know whether he sold or retailed liquor?

A. Yes sir.

968 Q. Do you know whether he had a retail liquor license from the United States Internal Revenue Department?

A. Yes, he did. I tell you the way it was. He was doing business here; his brother was in business in the city, you see, or I think, he said Peters street and he went out there and took the same license.

Q. He took—the original license was from New Orleans?

A. Yes sir.

Q. And the license was transferred, was it, to Three Mile bayou?

A. Yes, sir.

Q. You think that was in 1901 or 1902?

A. Well I am sure it was in both 1901 and 1902. You see he took out the license the last month in the year, like I did. That is what made me make the mistake about saying 1901.

Q. Do you remember visiting this territory as far back as 1880 or 1881?

A. No, sir; I don't think I did.

Q. Did you ever hear of the Mexican Gulf Canning Company or Pascagoula Canning Company having a store down there in 1880 or 1881?

A. No, sir; I never heard anything like that.

Q. How old a man are you?

A. I am 25 years old.

Q. The retail liquor license that was issued to you to retail liquor here, did you make application to carry the business on?

A. The year that I got them out myself I got the notary in Biloxi to get them for me.

Q. To carry on where?

A. To carry on in Three Mile bayou.

Q. Was, or was not, the original license taken out by you to carry on business at Biloxi and then afterwards transferred in—

A. As well as I can remember the man made a mistake, that was the way that happened. He made a mistake in writing on it Biloxi, and I changed it and sent it back and had them transfer it.

Q. That was transferred to carry on business at Three Mile bayou, La.?

A. Yes, sir; that is the way it read.

Q. You made the application to the Internal Revenue Office for the transfer to Three Mile bayou, La.?

A. The same man that filled out the application for me. I sent them back; I think his name is Austin.

Q. Who was it that swore to the application for the license?

A. Why it must have been me.

Q. Well did you, when you made the application for the transfer—did you swear again for the purpose of having the license transferred?

A. I don't know whether I did or not; I don't remember.

Q. You think it is probable or not that you did?

A. I don't remember anything of the kind. I just thought—

Q. Do you know that during those years you were carrying on business there or any other Mississippian that carried on business in that disputed territory in the way of keeping shops or stores?

A. No, sir; only that one I spoke of awhile ago.

Q. Master?

A. Yes, sir.

960 Cross-examination.

By Mr. McCLURG:

Q. Where did you say you were born?

A. I was born in Baton Rouge, La.

Q. How long did you live there?

A. Well I came away from there when I was a small child. I suppose a year and a half old.

Q. Where did you go?

A. I came to New Orleans.

Q. How long did you live there?

A. I must have lived here, I don't know how long—no, I went to Plaquemine. I lived in Plaquemines parish a while also.

Q. How long did you live there?

A. I couldn't say; I was too young for me to remember anything of that kind.

Q. Where did you go from Plaquemine?

A. I moved here to New Orleans.

Q. How long did you live in New Orleans?

A. I must have stayed here about three or four years.

Q. Where did you go then?

A. I went to Biloxi.

Q. How long did you live in Biloxi?

A. I should think about 15 years. Thirteen or fourteen years, something like that.

Q. You were in and out a good deal of the time you were living in Biloxi?

A. Yes, sir; I was out in the West two years and out in New York a couple of years, just like that and came back here and stayed a couple of years. I was not living there long. That has been my home; my people have been there all the time.

Q. Where do you live now?

A. I live in Biloxi.

Q. What is your occupation now?

A. I am just a common laborer; I have no occupation.

Q. How long did you live in Biloxi during this last stay?

A. The last time I went back there was in February.

Q. February last?

A. Yes sir.

Q. Where is Mr. Wentzell?

A. He couldn't get over. He stuck a nail in his foot and said he had blood poison it it.

Q. Where is he?

A. He is at home.

Q. Where is his home?

A. He lives right across the street from me.

Q. In Biloxi?

A. Yes sir.

Mr. DYMOND: The State of Louisiana has summoned Mr. Ed. Wentzell, and the commissioner has received the following document:

" Biloxi Sanitarium.

" BILOXI, Miss., August 23rd, 1904.

" This certifies that I now have under treatment Mr. Ed. Wentzell who is suffering from a wound on the left foot made by an old
970 nail deeply penetrating the ball of the foot and causing much pain and swelling. In my opinion it might prove injurious to him to have to do any considerable amount of moving around on it.

Respectfully,

(Signed)

H. M. FOLKES, M. D."

And also the following document:—

" BILOXI, Miss.

DEAR SIR: I am sorry but will be unable to attend court on said Friday August 26th.

Yours truly,

(Signed)

EDDY WENTZELL,
Biloxi, Miss."

both documents having been received by the commissioner, which said original documents are now offered in connection with the testimony marked Documents 97 and 98, copies of the documents being waived by counsel for the State of Mississippi.

By Mr. McCLURG:

Q. You don't remember this license of 1901 issued by the United States Government to you?

A. Well since the man has showed me the envelope I came to the conclusion it must have been taken out in 1901 and used in both years. That is the way I figure it now.

Q. They are only issued annually, as I understand it? Did you take out another one since 1901?

A. No, sir; I had one out before that, but I didn't have anything to do with the license. Another fellow got that out.

Q. When was it you said you remember about it, year before last?

A. Well, it was the winter before last.

Q. And you don't remember having any United States license during that time?

A. During what time?

Q. Year before last?

A. Well these licenses must have been taken out in 1901 and used in 1902. That is the way it must have been. I had a license for seven or eight months, October until May.

Q. As I understand you, during your career you have, at different times, unsuccessfully run a bum boat a saloon in the marshes and some sort of horses, is that correct?

A. I don't know about running any unsuccessfully. I run them both ways.

Q. You didn't stick at it long at a time.

A. Yes, sir; the season only lasts six months. I stuck at it as long as the season lasted.

Q. In what?

A. In the liquor and grocery business.

Q. How does it run in the bum boat business?

A. It runs all right in the bum boat business.

Q. How does it run in the horse race business?

A. That has nothing to do with the Louisiana marshes. I just told you what I was doing when I was over here.

Q. I am inquiring about you, not the Louisiana marshes.

A. It runs all right in the horse business I guess.

Q. Did you have a revenue license for your bum boat or whiskey business from either the State of Mississippi or the State of Louisiana?

A. No I didn't have either one. I understood I didn't have to have any.

Q. Were you ever arrested for violating the laws of either State in that business?

A. No, sir; I never saw any one that looked like they wanted any license.

Q. You sold mostly to them that wanted some of your vendables?

A. Most of them wanted groceries and provisions.

Q. And they wanted a little of elixir of life, did they not?

A. They wanted a little of that.

Q. Is it not true that in this mad race of life you have been in and out of business of variable characters?

A. Well, I don't know whether it is of variable character or not, but I have been into it.

Q. Is it not also true that most generally you have been an uncertain quantity floating upon the circumambient air of indifferent circumstances, dependent largely upon the shifting changes of fleeting conditions?

A. That is too poetic for me. You must not talk in that kind of language to me.

Q. Counsel asks that the question be read to him and demands an answer.

A. I don't quite understand the question.

Q. Have you not been a kind of rover in life?

A. Rover?

Q. Yes.

A. Why no sir.

Q. I thought you said you had been to New York?

A. I have done business on the square all the time.

Q. I didn't ask you that. Have you not roved about a good deal for a man that is not over twenty-five years old?

A. I have roved about a little bit.

Q. How much capital did you have invested in the firm of Ahern & Wentzell at Three Mile La.

A. I couldn't say how much there was invested in it. It must have been about six or seven hundred dollars.

Q. The firm, or yourself?

A. The firm. We were both partners in it.

Q. Now tell me, that was a kind of shack out there to feed and accommodate the fishermen?

A. That is all it was.

Q. Your building was nothing of a permanent nature.

A. Oh now: it was an old camp; we call it a camp.

Q. And you went there to make what you honestly could out of that class of people in that section?

A. That is the very thing.

Q. You were there for the money that was in it?

A. Yes, sir; when the money went away, I went away.

Q. You didn't care whether you were in Louisiana or in Mississippi.

A. No, sir.

Q. You did not really know?

A. That is the truth about it; I didn't know.

Q. And you didn't ask any questions about it?

972 A. All I did inquire was when I went out here, whether I would have to have any Louisiana State license or not.

Q. Who did you enquire of, if you remember?

A. I don't remember now exactly who it was. It was a fellow, I thought knew more than I did, and the fellow told me no I would not have to have any. The only revenue license, the only people that would bother me was the revenue cutter taking my things off the boat; they could see me putting them on.

Q. And the United States revenue license protected you from interference from the cutter?

A. Yes, that is what I thought about it.

Q. And so far as knowing anything about the boundary between Louisiana and Mississippi you can't say?

A. No sir, I can't say.

Q. You don't undertake to say?

A. No sir.

Redirect examination.

By Mr. DYMOND :

Q. Amongst the various people with whom you came in contact, what was the general idea as to what State you were in or as to what State Three Mile was in? What was the general understanding among the fishermen and others who were out there?

A. I tell you I heard some of them say they thought it was in Louisiana, and some of them thought it was in Mississippi. I never paid any attention to that kind of talk. What made me get these licenses out in Louisiana the fellow you know that went out with me got the licenses out himself and he got them in Louisiana. So I thought I would keep the old license that is the reason. I had to have it located somewhere; I couldn't call it Three Mile.

Q. Was it the Internal Revenue Office?

A. Yes sir.

Q. And didn't you arrange for the license from Biloxi, Miss.?

A. Yes sir.

Q. And this revenue cutter that you referred to, is that the United States revenue cutter that operates in Mississippi sound and Lake Borgne?

A. Yes sir.

By Mr. McCLURG :

Q. One more question, please. During the time that you were at Three Mile, did you hear anything of a threatened armed conflict or a crisis between the officers of Louisiana and the officers of Mississippi about the boundary?

A. No sir; there was no talk of boundary when I was out there. That is the reason I had to close up business on account of that. They wouldn't allow any more Biloxi people to go out there.

Q. When this controversy was raised, it put you out of business?

A. Well, there was not money enough out there for me. The Biloxi people were the people I made money out of. I couldn't make any money out of the Louisiana people. They were all dagoes.

973 OBJECTION.—Mr. McCLURG: The same exception is reserved to the testimony of the witness Ahern as heretofore noted to the testimony of like character at this hearing.

EDWARD M. WALLACE, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND :

Q. Where do you live at present?

A. Lafayette, La.

Q. What is your occupation?

A. Chief dispatcher of the Morgan's Louisiana Texas Railroad Steamship Co.

Q. How long have you been located there?

A. Two years last March.

Q. Prior to that where did you live?

A. I resided in New Orleans.

Q. Did you ever reside in Mississippi, Mr. Wallace?

A. No, sir.

Q. What was your occupation and with what concern were connected when you resided in New Orleans?

A. Well, I was located in New Orleans from 1871 to 1881 with the New Orleans, Mobile & Chattanooga railroad, afterwards Louisville & Nashville railroad, from 1871 to 1881.

Q. Does that road traverse the sea marsh in passing from New Orleans eastwardly towards Mobile?

A. Yes, sir.

Q. Are you familiar with the country traversed by that road?

A. Yes, sir.

Q. Did you have occasion during the period of time you mentioned, from 1871 to 1881 to frequently traverse that road?

A. Well, almost daily you might say; at least once or twice a week any way.

Q. What was your official connection with the road at that time?

A. I entered the service as train dispatcher and afterwards was appointed to trainmaster, and held the position of trainmaster down to the time I left the company in 1881.

Q. Did you have occasion to look after or to keep posted as to the road bed through the marshes, eastward of New Orleans.

A. I had nothing whatever to do with the roadbed. I had charge of the handling of trains and trainmen.

Q. Was that handling trains in any way affected by the condition of the roadbed.

A. Very much so.

Q. Then did you or did you not keep posted, or did you know the condition of the roadbed from time to time?

A. I had nothing to do with the roadbed department whatever. I would get memoranda at times from the roadmaster or superintendent to reduce train speed between certain points for a certain length of time, something like that.

974 Q. Well, was there any interruption to traffic between those years, 1871 and 1881 on this territory known as the marshes east of New Orleans as far over as Bay St. Louis?

A. Many of them.

Q. What was the cause of the interruption?

A. The cause was usually from storms from the Gulf, blowing water over marshes and washing the roadbed away.

Q. How frequently did they occur?

A. Well, we have had it occur twice in one year. Then some

times it would miss a season. I couldn't exactly remember the exact date.

Q. Did it occur with any great frequency?

A. It was almost—well it was on an average every year. Sometimes we would have one or two storms in one year; and other times we would miss a year. It was just as sure, a bad storm in the Gulf, we would always feel the effect on the track by the washing of the roadbed which caused us to discontinue our trains and transfer passengers, trains, etc.

Q. I show you map, Mr. Wallace, known as map No. 59 and ask you what railroad it is that runs from the western or left hand side of said map along the coast north-eastwardly.

A. Well, it was the New Orleans, Mobile & Chattanooga railroad when I entered the service.

Q. Is that the railroad concerning which you have just been testifying?

A. Yes, sir; that is the line.

Q. Marked on this map with this line?

A. Yes, sir.

Q. Now called the Louisville & Nashville railroad?

A. Yes, sir, one and the same.

Q. Look at this map, from which corner did the storm come that produced the results concerning which you have just testified?

A. Well, it was always from the north-east as a rule. We had them sometimes from the south. I couldn't give the correct data on that though.

Q. Well which would be the wind, Mr. Wallace, looking at this map and looking at this compass here, north, south, east and west, which was the wind that would pile up the water?

A. I tell you it didn't seem to make much difference. Whenever there was a storm in the Gulf it affected us. I think though, as near as I can remember, it was a north-east wind.

Q. Of what character were the damages which were sustained by the railroad as a result of these storms.

A. Well it blew the water over the track, completely submerging the track and washing the track from the roadbed.

Q. Any damage done the bridges?

A. At times the bridges were damaged, more or less. The damage to bridges was mostly—was most usually caused by vessels being blown against them.

Q. Are you at all familiar, Mr. Wallace, with the marshes south of Bay St. Louis. Have you ever visited them?

A. Where do you mean? Around the line of that railroad?

Q. No, sir, across Mississippi sound.

A. No, sir; I have not been there.

Q. Therefore, you don't know what effect was produced by the storms on the marshes south of Bay St. Louis?

A. I do not.

975 Cross-examination.

By Mr. McCLEURG :

Q. That is the same railroad that is now called the Louisville & Nashville railroad, of which Mr. Charles Marshall is superintendent?

A. The same line.

Q. Has there been any material changes made in the configuration of the Mississippi shore or of these marshes to the south of Mississippi sound, you have no personal knowledge and can't testify as to that?

A. No sir.

Q. And you do not undertake to testify scientifically as to the effect of storms coming from different directions upon these marshes or other Mississippi shore line, do you, Mr. Wallace. As I understand it you are testifying from your personal knowledge?

A. I couldn't say so. I know whenever we had a severe storm it affected our line.

Q. The railroad?

A. Yes, sir; we never escaped.

Q. As to whether those storms had the effect of depositing accretions in the marshes or along the Mississippi shore, you are not prepared to say?

A. No, sir; I couldn't say a word about that.

Q. And you have no personal knowledge or information as to whether those marshes are subsiding or building, have you?

A. No, sir.

Q. Mr. Marshall testified in this case that he was of the opinion that along the line of the Louisville & Nashville railroad that the marshes were increasing somewhat in height because of the deposits of vegetable matter and such substances as water usually leaves. Have you any knowledge as to that?

A. No, sir; I don't know that I have but I think it is quite plausible. I think Mr. Marshall's theory is very plausible.

Q. He stated as a reason for his opinion that he had observed there that below, where the road now runs on the ground, that there is a bridge and trestling and that notwithstanding the dumping of dirt by the railroad company to build up its track that nevertheless it bore evidences to him of accretion in the building up of the soil. Did you notice anything like that during your connection with that road?

A. No, sir; I couldn't say positively in that connection. All my time was taken up with the trains and the trainmen. I did not give the roadbed any concern whatever, because I had nothing to do with it. If the roadbed was reported unsafe or in a weakened condition, or anything of that sort, I reported it to the superintendent or the roadmaster and they directed the necessary repairs. And whenever the line was weakened by storms or other causes,

they would notify me how to handle trains or what speed to make over that portion of the line.

Redirect examination.

By Mr. DYMOND :

Q. How did the railroad regard this condition of the storms?

976 OBJECTION.—Mr. McCLURG : That is especially excepted to as being incompetent.

A. How did they regard the——

Q. Generally, yes?

A. In what way.

Q. Was it a source of annoyance?

A. Oh, yes. It was considered a great drawback. It certainly was a very great expense to the railroad company. It caused a large force of extra men to be put on after every storm to repair the line. It caused a loss and delay to traffic; traffic would sometimes be diverted.

OBJECTION.—Mr. McCLURG : Counsel for the State of Mississippi states that the same objection is reserved, because this testimony should have been given in chief and is not properly testimony in rebuttal.

JAMES K. HENLEY, a witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you reside?

A. I reside at Biloxi.

Q. In the State of Mississippi?

A. Yes sir.

Q. What is your present occupation?

A. I am the cashier for the Louisville & Nashville road, of the station.

Q. How long have you been connected with the Louisville & Nashville railroad or its predecessor the New Orleans, Mobile & Chattanooga railroad?

A. From 1870.

Q. In what capacities have you been employed?

A. As agent.

Q. At different points on the route of the road?

A. Yes sir.

Q. Between New Orleans and what point?

A. Between New Orleans and Scranton.

Q. Are you familiar with the nature of the country traversed by this railroad between New Orleans and Scranton?

A. Yes sir.

Q. Have you had occasion yourself to traverse the road frequently?

A. Yes sir. I have been over the road very frequently.

Q. Within the last thirty years?

A. Yes sir.

Q. Did your duties ever bring you in connection with the operation of the road or the failure of the road to operate?

A. Yes sir; I was telegraph operator too. You know we run the trains by telegraph.

Q. Were there during the thirty years, any times during which the railroad failed to operate?

A. Yes, sir.

Q. Did they occur seldom or with any frequency?

A. It was not very frequent, no. It was when we would have a good big south-east storm—wind storm.

977 Q. Did they occur every year or very seldom?

A. It occurred very seldom. I think about four or five times within the time I have been connected with it that we had trouble with the track.

Q. What was the trouble you refer to?

A. Well, there was one time that the bridges all washed away; that was in 1893. And the other different times was when this marsh down here had washed away.

Q. Do you refer to the marsh east of New Orleans en route to Bay St. Louis?

A. Between New Orleans and Pearl river; over through there?

Q. Will you please look at this map marked No. 59 and your attention being called to the upper left hand corner of it, to the Rigollets; Pearl river, etc., is or is not that the section concerning which you are testifying?

A. Where is Bay St. Louis?

Q. Here in the upper center of the map.

A. Yes sir; between New Orleans and Bay St. Louis.

Q. What effect did the storms produce in that locality?

A. It washed the track away; washed the dirt away, the road-bed, of course they couldn't run until they carried dirt there and filled it up again. But this last storm washed the bridges away in 1893.

Q. Were there any storms in the early '70's in that locality that you remember that interfered with the operation of the road?

A. I couldn't say now just what time that was. But when the road was new and we had a great deal of trouble with it.

Q. From this same cause?

A. Yes, sir.

Cross-examination.

By Mr. McCLURG:

Q. The proper or improper construction of the roadbed of the Louisville & Nashville railroad in that neighborhood would have a great deal to do with the effect that those storms have upon it wouldn't it?

A. Yes sir.

Q. And tell me why?

A. You see in a south-east wind it draws the water up here in Lake Pontchartrain and don't wash the tracks so bad. It is when the wind goes down the tide falls, and the water goes out over the track; that is the time it does the most damage.

Q. It is the receding of the water?

A. That is my understanding. I have never been in the marsh during a storm, but I always understood it was the receding water that washed the track away.

Q. You mean that part of the marsh over which your road runs?

A. Yes sir.

Q. Now, in addition to that, with reference to the bridges, your superintendent, Mr. Marshall, testified about some bridges being hastily built, in that the caps protruded and when the water got up by the track that the timbers would come in there and pounding against those ends and under it would damage the bridge. Now it would have the effect with reference to the bad construction of the bridges as well as the improper construction of the roadbed?

A. Yes; but I think in 1893 it washed all of them away,—all the bridges. Later he saved them from washing away by having the bridge high enough. I think our bridge there at Biloxi was floored and when the water got up to that, it just pulled the whole thing off.

Q. So the fault was not wholly with the high water or storm, is that what you mean?

A. I don't know that you would call those bridges improperly constructed.

By Mr. DYMOND:

Q. You are not a road builder?

A. No sir.

Q. Would you venture to say, considering the conditions as they exist in the marshes, east of New Orleans, that the road of the Louisville & Nashville railroad was improperly constructed?

A. No, I would not.

By Mr. McCLURG:

Q. You wouldn't undertake to say that it was scientifically built?

A. I am not a road builder. I wouldn't like to criticise Mr. Marshall's work.

OBJECTION.—Mr. McCLURG: Same objection as to the testimony of the other witnesses heard to day.

JOHN CONNER, a witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

- Q. Where do you live ?
A. I live on Pearl River bridge on the Louisiana side.
Q. That is, you are on the Louisiana side of the centre of the channel of Pearl river.
A. Yes sir.
Q. What is your occupation ?
A. Bridge tender.
Q. Is that on the Louisville & Nashville railroad ?
A. Yes sir.
Q. How old a man are you ?
A. I am fifty three years old.
Q. How long have you occupied the position of bridge tender at that point ?
A. Twenty-nine years the 10th of last April.
Q. Have you had occasion, during those 29 years, to notice the various storms which have occurred in that locality ?
A. Yes sir; I was in all of them.
Q. Will you please look at this map, marked No. 59, and state whether your bridge is on the Pearl River side, east branch, as shown on the map where the Louisville & Nashville railroad crosses ?
979 A. Yes sir; it is on Pearl river, on the East branch.
Q. Now Mr. Conner, has the condition of storms been a matter of frequency or infrequency so far as early records show during the 29 years that you have been connected with the railroad ?
A. You mean how high they have been ?
Q. No; do they occur pretty much every year ?
A. Generally every four or five years; there was one bad storm in 1881 ?
Q. Let us begin at the beginning, as well as you can recall, what was the first storm after 1870 that you remember ?
A. 1881.
Q. Were there no storms between 1875 and 1881 that you recall ?
A. No, sir; not that I saw any.
Q. What do you call a storm ?
A. I call a regular gale from the outside a storm. When the wind blows the water from the outside.
Q. Were there any smaller storms or any disturbances at all during the ten years between 1870 and 1880 ?
A. As a general thing around about the equinox there are little storms, but they don't amount to anything. The tide may rise at an average of two feet and a half or three feet over ordinary tide.
Q. How frequently did they occur ?

A. That would be about twice a year.

Q. Now then, these storms I understand you to say, began in 1880? How much did the tide rise on that occasion?

A. It rose about five feet and a half. That was about, I couldn't say exactly, but somewhere about five and a half feet.

Q. What is the ordinary rise of the tide at Pearl river?

A. A foot and a half or two feet and a half. It all depends on the wind. If the wind blows strong from the south-east it rises nearly two feet and a half; in an ordinary wind it would rise a foot and a half.

Q. What would be the average tide?

A. About two feet.

Q. What is the highest you ever saw the tide rise in that locality?

A. Outside of those storms?

Q. With the storms?

A. Well, five and a half feet.

Q. After 1880, when was the next severe storm that you remember?

A. This last storm of 1893, that was the next one.

Q. How high did the tide rise on that occasion?

A. I think the 1880 storm was about six inches higher than the other; that was the severest while it lasted. It did all the damage in about six hours.

Q. What effect, if any, did those disturbances of the elements have on the operation of the Louisville & Nashville railroad?

A. Well, at our bridge there it raised the iron bridge off its beams. It was an iron bridge and the iron part was standing on a girder that was on top of the beam, and the storm raised this iron girder right up and let the piles swing out from under the girder and the bridge was about eight feet out of line up stream.

Q. Was that due to the influence of the storm from the southeast?

A. Yes sir.

980 Q. On what occasion was that, in what year?

A. That was in 1893?

Q. Was any damage done to that bridge in the storm of 1880?

A. No sir; none at all?

Q. Was there any damage done to any other part of the road so far as you know in 1880 or 1893 or any other time?

A. In 1880 the roadbed all washed away between Pearl river and Lookout and put the track right into the canal; washed the track off its bed and threw it off into the canal on the other side of the track. Or, in other words, it threw it off about six feet off the bed.

Q. Was there any other bridge damaged during these 29 years, so far as you know?

A. There was some damage done at Scranton. There was a wash-out at Scranton; but I would not be certain. I am not certain what damage was done because it was so far away.

Q. Any damage done to the roadbed between Bay St. Louis and

New Orleans where it passes through the marshes at any other time?

A. To a little place between Lake Borgne and a place called Ansley that washed out; at Bayou Caddy.

Q. You spoke of the roadbed washing out between Lookout and Pearl river?

A. Yes sir; and it also washed out between Lookout and the Rigolets.

A. What distance is it from Pearl river to the Rigolets?

A. Seven miles.

Q. So that the whole track washed out during—

A. Not all; some, there were some high places that didn't wash out.

Q. About what proportion of that was washed out?

A. Over half.

Q. So that was over three and a half miles of track washed away?

A. Yes, sir.

Q. Now in regard to these equinoctial storms, did they or not cause any inconvenience to the railroad in its operation?

A. Yes, sir. That storm in 1880, they had to transfer by the steamer Heroine from Pearl river to Milneburg and I think, if I do not mistake, that they transferred ten days before they got the track back so that they could run trains over it.

Q. Do you know anything about the territory south of Bay St. Louis known as the marshes as shown on this map No. 59?

A. No, sir; I don't know of anything outside of Pearl river.

Q. Pearl river is the boundary between Louisiana and Mississippi?

A. I think; that is what they say.

Cross-examination.

Mr. McCLURG:

Q. Have you ever had anything to do with any other railroad except the Louisville & Nashville?

A. Yes; but not South. I was on the Hannibal & St. Joe; I worked on the Wabash & Great Western.

Q. Don't all railroads suffer more or less from unusual freshets and high water, whether they be in the marshes or somewhere else?

A. Yes, sir; I never knew one that did not.

Q. And is it not true that faulty construction of the roadbed or in the bridges contribute to the damage done by the water.

981 A. Yes, sir; I never knew any road that had not been washed out by freshets and overflows.

Q. And is it not also true that the receding waters do more damage to the roadbed than the coming on of the storm water?

A. Well, is some cases.

Q. Are they not more destructive?

A. In this case it is the coming in water that does the most damage as far as I ever saw.

Q. The reason I ask you this is, I think, several witnesses have testified not only with reference to the roadbed, but with reference to the action of the storm waters upon the shore line, that the receding waters are the most destructive; and I wanted to get your ideas about it?

A. I think I answered that; did I not?

Redirect examination.

By Mr. DYMOND:

Q. As compared with other railroads, Mr. Conner, is the Louisville & Nashville between New Orleans and Pearl river more or less exposed than other railroads to damages by the elements?

A. Well, yes; I think it is.

Q. Why?

A. For the reason that it runs right along the lake shore.

Q. You think it is what?

A. I think it is more liable to damage from high water than any other road.

OBJECTION.—Mr. McCLURG: Same exception is reserved to the testimony of this witness, as not being properly in rebuttal.

PATRICK J. McDONNELL, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. I reside in New Orleans.

Q. What is your occupation?

A. Locomotive engineer on the Louisville & Nashville railroad.

Q. How old a man are you?

A. I am fifty-three years old.

Q. How long have you been connected with the Louisville & Nashville railroad?

A. Since the year 1872.

Q. Over what part of the Louisville & Nashville railroad have you operated?

A. Between New Orleans and Mobile.

Q. You have, therefore, had occasion to frequently traverse the country, especially between New Orleans & Bay St. Louis?

A. Yes sir.

982 Q. What is the nature of that country until you get a little bit beyond Pearl river?

A. Well, it is mostly marsh.

Q. About how high is the railroad compared to the ordinary sea level?

A. Well, I should think not more than 12 inches any way, and hardly that.

Q. In high tide is that covered?

A. Yes sir. In high tide it is generally covered; about covered.

Q. Now, during these thirty years have you been continuously in the employ of the railroad operating engines over that section?

A. Yes sir.

Q. Have you had occasion to notice the condition of the roadbed in operating between New Orleans and Bay St. Louis?

A. Yes sir.

Q. Does your duty as a- engineer require that you should notice that as you go along?

A. Yes sir.

Q. Has there ever at any time been anything the matter with the roadbed between those points?

A. At different times when there were storms the roadbed has washed away.

Q. Has that occurred with any frequency during the last thirty years?

A. Well, I should judge, as near as I can remember, it has occurred about six times during the last thirty years.

Q. When you say six times, do you mean to say to a considerable extent or—

A. I mean to a considerable extent.

Q. Has it occurred at any other times not to a very great extent?

A. Yes sir.

Q. Has that been with any frequency where it would be damaging to a less extent?

A. Only when we had those high storms you know.

Q. What was the effect that storms produced on the roadbed?

A. Well, the water would tend to wash the roadbed and we would frequently get orders to run slow. They would have to prop the track up with crossies at certain points.

Q. Your orders to run slow, did you get them more frequently than six times in thirty years?

A. Yes sir.

Q. How frequently have you gotten those orders to run slow do you think?

A. I should judge once a year, probably; sometimes oftener.

Q. Would that be caused by the effect of the water on the roadbed.

A. Yes, sir.

Q. Now, in these six instances that you refer to, when were they. Can you recall?

A. Well, I can't tell you the year now; 1893 was the big storm

and I think—I couldn't without going and getting the records, I couldn't tell you exactly the year.

Q. Was there a storm in 1880 or 1881?

A. I couldn't say positively about that.

Q. Were there any storms during your early connection with the railroad?

983 A. Yes, sir, in 1874—about 1876—I think about 1874 they had a very severe storm.

Q. Can you describe, in a brief way, some of the results produced by any one of those storms?

A. Well, just simply the water covered the marsh and, in fact, got over the track in certain places and the section men would have to drive stakes to keep the track in place.

Q. Have you had occasion to go through one of these storms while out on the road?

A. Yes, sir.

Q. What storm was that?

A. Well, I was in the storm of 1893, and in the other storms; I can't tell you exactly the years now.

Q. Where was your territory?

A. In 1893 I was at Ocean Springs.

Q. Where were you on a previous occasion?

A. I came down as far as the bridge and found it all washed away and had to turn back to Ocean Springs.

Q. Do you recall where you were on any previous instance when you went through a storm?

A. On another occasion I was at Pearl river when the bridge washed away and it was a severe storm.

Q. You don't remember when that was?

A. I can't recollect without going back—

Q. What sort of a bridge did Pearl river have at that time?

A. What they call a Howe truss bridge.

Q. Was it made of wood or iron?

A. It was made of wood and iron bolts with guys, guy rods.

Q. Wasn't it substituted with an iron bridge later?

A. Yes, sir.

Q. Did the iron bridge ever wash away?

A. No, sir.

Q. Do you know anything about the country or marsh south of Bay St. Louis down around Isle à Pitre. Have you been down there?

A. No, sir.

Cross-examination.

Mr. McCLURG:

Q. You have been familiar then, with this railroad about thirty years, as I understand it?

A. Yes, sir.

Q. Is not a great deal of that road through the marsh territory now running on ground that was formerly on trestling work, trestling or bridging?

A. When the road was first built there was some trestling, yes, sir.

Q. Can you say about how much of trestling has been displaced by earth work say from across the marshes?

A. I suppose it would be a quarter of a mile.

Q. No more than that altogether?

A. It might be a half a mile. The Lake Catherine trestling was filled up; there was trestling right through the waters and afterwards filled in.

Q. Can you say whether or not these storm actions have brought any sediment, decayed vegetation or deposit of any kind and had a tendency to raise the marshes in the neighborhood of your
984 road across there?

A. There has been a great deal of wood and stuff washed up by those storms, but I can't say, of course—it might tend to raise it some, the timber is along there yet that was washed up by those storms.

Q. There has been more or less deposit by the storms and wave actions along your line in the marshes?

A. I suppose there has been some deposit, yes sir.

Q. The construction of the road, especially with reference to an improper construction of the roadbed over trestling, may have something to do with the effect of the waters brought in by the storms upon it, may it not?

A. I couldn't say that. A road improperly constructed in its bed or in its bridges would suffer more from storm action than one properly constructed in bed and bridges. The company has been continuously raising the roadbed; in fact they are until this day doing so, since I have been connected with the road.

Q. That don't quite answer my question, please?

A. When I was first connected with the road I considered it was not as well constructed then as it is at the present day.

Q. It is being continually improved upon both in bed and bridges?

A. Yes, sir.

Q. Now, Mr. Marshall and one or two of the employees of that road have testified that the weight of the road and the running of the engines and heavy trains over it, has had a tendency to make it settle and sink down. Have you noticed anything of that character.

A. Well, it must be so because they would not have occasion to raise the roadbed unless the weight of the trains going over it had a tendency to sink it.

Q. That soil is of a mucky nature?

A. Yes, sir; that is between here and Chef Menteur and in fact between here and Pearl river.

Q. And one or two places are there not beyond Pearl river?

A. Yes sir.

Q. And it is not as good for solid roadbed as clay soil?

A. No, sir; I should judge not.

Mr. McClurg: Counsel for the State of Mississippi cannot discover any difference between the line of testimony now being taken on the part of Louisiana than than originally taken to sustain her side of this suit, and counsel for the State of Mississippi now excepts, generally, to all testimony taken up to this time as being irrelevant and incompetent, as not in rebuttal but properly taken in chief.

Adjournment of Proceedings.

At this stage of the proceedings (12:30 p. m.) the hearing was adjourned until 1:15 p. m. by the commissioner.

985

Resumption of Proceedings.

Pursuant to adjournment the hearing was resumed at the hour of 1:15 p. m., all parties being present.

FREDERICK M. WEED, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. Dymond:

Q. Mr. Weed, where do you live?

A. I live at Ocean Springs, Miss.

Q. How long have you lived there?

A. I went to Ocean Springs the 15th day of October, 1877.

Q. And you have been living there ever since?

A. Yes, sir.

Q. Were you ever connected with what is known as the Louisville & Nashville railroad?

A. Yes, sir.

Q. When were you in their employ?

A. I was employed; well I was employed sometime—I was employed on the then New Orleans & Mobile & Chattanooga railroad when I came to Ocean Springs; although I was really engaged about six months prior to that by D. B. Robinson, who was then general superintendent of the road. I came to what is known—it was then the New Orleans, Mobile & Chattanooga in October, 1877.

Q. Then for how long were you connected with the railroad after that?

A. I have been in continuous service with the railroad.

Q. Up to date?

A. Yes, sir.

Q. You are not in the employ of the railroad now?

A. Yes, sir.

Q. What is your present employment?

A. I am railroad agent at Ocean Springs.

Q. Have you had occasion, during the period since 1877, to cross the railroad frequently between, New Orleans and Ocean Springs?

A. Well, I have been over it a good many times.

Q. Are you familiar with the nature of the country crossed by the railroad between New Orleans and Bay St. Louis?

A. Yes, sir.

Q. What is the character of that country?

A. Between Bay St. Louis and Ocean Springs?

Q. No; between Bay St. Louis and New Orleans.

A. It is rather low, marshy.

Q. Have you ever been out in the marshes south of Mississippi sound?

A. I never have been there. I have been trying to get over there for fifteen years but never could get any further than Cat island.

Q. Were you close enough to see the character of the marsh or across South pass?

A. Well, no sir; I have been to Cat island only.

Q. Therefore you don't know anything about the nature of the soil or marsh southwest of Cat island?

A. No, sir; not a thing in the world.

Q. Have you in the years that you have been connected with the railroad, had occasion to notice that any storms have occurred in that general locality?

986 A. Yes, sir; we have had two or three very severe storms since I have been there.

Q. Have you had others of less severity?

A. Yes, sir.

Q. About what time of the year did those storms occur?

A. My memory is that one occurred in October; I don't remember what year. Not October, but August, we had quite a storm in August once. I get confused on the dates and months.

Q. Is there any general time when you have disturbances here?

A. We generally have them in the fall.

Q. Did you ever hear of that period called the time of the equinox?

A. Yes, sir.

Q. Would you recognize those as equinoctial storms, those storms that you are testifying about?

A. I don't know really whether they were or not; some people called them equinoctial storms.

Q. What effect did those storms have on the operation of the Louisville & Nashville railroad or its predecessor?

A. We have had some storms which stopped operations, put the traffic to a standstill for a period.

Q. Why and how was that brought about?

A. Well, they just, the storm washed out the roadbed in places and washed away some of the bridges.

Q. How frequently has that occurred to your knowledge?

A. I think about, if I am not mistaken, about three or four times since I have been here; in that period possibly the traffic was interrupted four times. But seriously it was about three times; very seriously it was.

Q. Was there ever any danger to the bridge at Ocean Springs?

A. Yes sir; it has been damaged very seriously twice. But once particularly; I think that was in 1893.

Q. What sort of bridge is that at Ocean Springs?

A. They have a trestling bridge there, the bay is trestlings you know. It is a steel bridge or iron bridge, over the channel.

Q. Was the bridge over the channel affected in any way by the storm?

A. No, sir; not that I know of. I think not.

Q. The damages were more in the trestle work?

A. It was all in the trestle work.

Q. Leading up to the bridge?

A. Yes, sir.

Q. Was that broken away?

A. Part of it partially and part of the bridge was taken away entirely.

Q. Was that from a south-east or what was the direction of the wind?

A. My recollection was that the wind was from the south-east that did the damage with us. What we call a cyclone.

Q. Did you go through that storm?

A. Yes, sir.

Q. Was it much of a storm?

A. We thought it was pretty severe; I was down on the bridge when part of it was taken away.

Q. How high did the waves come rolling in there?

A. It is hard to tell. I think waves there sometimes went as high as twenty feet, may be more.

Q. Would that same storm affect the territory south-east 957 within a distance of fifty miles or thirty or forty miles?

A. I think it would affect the whole territory; everything in this vicinity, everything contiguous I should judge it would. I think it was a south-east; that is my recollection.

Cross-examination.

By Mr. McCLURG:

Q. How much of this history of the damage done the Louisville & Nashville railroad can you say came under your personal observation. I take it that you have testified generally as to most of the damage done?

A. I did not see any of it personally, south. I think I went down

as far as pretty near Mississippi City. I didn't go down into the marshes at that time down this way and only know what I heard about that.

Q. You don't know what effect it had in the marsh territory?

A. I know what effect it had on the road in the marsh, but at the same time I couldn't swear to it from my own personal observation.

Q. I mean in that part of the marsh which is south of Cat island, south of Mississippi sound.

A. I couldn't say anything about that, of course not; I was not down there.

Q. You don't know whether it widened the water courses through it or the bays or the lakes?

A. No, sir.

Q. You don't know whether or not it washed away any of the islands or built them up?

A. No, I couldn't say as to that.

Q. Do you know what territory is in dispute in this litigation?

A. I can't say that I do really.

Q. You are not prepared to say whether any of the territory in dispute between Louisiana and Mississippi was materially affected one way or the other by any of those storms?

A. No, sir; I couldn't testify in regard to that.

Mr. McClurg: Same exception to this testimony as to the foregoing testimony.

Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned by the commissioner until to-morrow at 11 o'clock.

988

Resumption of Proceedings.

NEW ORLEANS, August 27th, 1904.

Pursuant to adjournment the hearing was this day resumed at the hour of eleven o'clock at the same place.

Present: Hon. Frank H. Mortimer, U. S. commissioner.

Hon. Walter Guion, attorney general for the State of Louisiana.

Messrs. John Dymond, Jr., and F. C. Zacharie, associate counsel for the State of Louisiana.

Hon. William Williams, attorney general for the State of Mississippi.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

NOTE.—The taking of rebuttal testimony on behalf of the State of Louisiana, will be resumed September 5th, 1904, at eleven o'clock, a. m., at the office of the United States district court, in New Or-

leans, Louisiana, at which time the Honorable W. D. Bullard will be requested to preside, unless there be some agreement to the contrary, at which time the testimony in rebuttal, of Louisiana, will be resumed; and if in the meantime, in the opinion, or by agreement of counsel, anything should prevent the meeting on that day, another day will be fixed, by agreement; both counsel waive the ten days' notice required by agreement; at which time the counsel for the State of Mississippi will be permitted to introduce in evidence any and all documentary evidence which may be at that time in their possession which they desire to introduce; thereupon, the hearing was adjourned.

Resumption of Proceedings.

NEW ORLEANS, LA., September 5, 1904.

Pursuant to adjournment, the commission met at the office of the clerk of the United States district court in New Orleans, Louisiana, this Monday, September 5th, 1904, at eleven o'clock, a. m., for the purpose of taking further testimony and filing further evidence on the part of the State of Louisiana in rebuttal. The Honorable Frank H. Mortimer, commissioner for the State of Louisiana, being absent, by agreement of counsel the testimony shall be taken and the evidence noted, by the Honorable W. D. Bullard, commissioner for the State of Mississippi, and the proceedings continued temporarily before him.

Present: W. D. Bullard Esq. commissioner.

John Dymond Jr., Esq., F. C. Zacharie Esq., associate counsel for Louisiana.

Monroe McClurg, associate counsel for Mississippi.

JOHN M. PARKER, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. DYMOND:

Q. Mr. Parker, you live in this city?

A. Yes sir.

Q. How old a man are you?

A. 41.

Q. What is your occupation?

A. Cotton factor.

Q. Have you ever been president of the New Orleans Cotton Exchange?

A. Yes sir.

Q. Have you ever occupied any other prominent positions in this community?

A. Yes sir.

Q. Will you please mention them?

A. President of the board of trade.

Q. Are you familiar at all with what is commonly known as the Mississippi coast, or across the lake?

A. I think so.

Q. The southern portion of the State of Mississippi?

A. Yes sir.

Q. What part of your life have you spent there?

A. Most of it, during the summer for probably 30 years.

Q. Have you owned property over there?

A. Yes sir.

Q. Is your family accustomed to staying over there during the summer?

A. Yes sir.

Q. Are they over there now?

A. Yes sir.

Q. Are you at all familiar in any way with that territory south of Bay St. Louis, commonly called the Louisiana marshes?

A. I am.

Q. Have you ever visited that territory?

A. Many times.

Q. That territory is in dispute in this case between the State of Louisiana and the State of Mississippi; can you tell us, so far as its name is concerned, to what State it has generally been recognized as belonging?

A. Louisiana.

Q. What is that territory generally called?

A. Louisiana marsh.

Q. Have you had occasion to circulate amongst the people over there who would have occasion to visit that locality?

A. Quite a number of them.

990 Q. Have you ever heard them call the territory any other name than the Louisiana marsh?

A. No sir.

Q. Does that territory include the extent of coast from Isle à Pitre on the east to Malheureux point on the west, as shown by map No. 59? Here is Isle à Pitre to the east, and here is Malheureux point to the west, and here is Bay St. Louis immediately to the north?

A. Yes sir, I regard that entirely as the Louisiana marsh.

Q. Have you ever heard anybody contend that that belonged to the State of Mississippi?

A. No sir.

Q. Were you brought in contact with Mississippians who frequented that locality and lived along the Gulf coast, which was called by us "Over the Lake"?

A. Yes sir.

Q. As belonging to what State did they generally recognize that territory?

A. For the last four or five years we have had a schooner in commission, which has regularly had a Mississippian aboard as captain,

and they always referred to it as the Louisiana marsh; they are professional oystermen during the winter.

Q. Do you know where the deep channel line is in Mississippi sound, extending from East Pearl river to the pass between Cat island and Isle à Pitre?

A. Yes sir, it is Cat Island pass, and is marked by black buoys lying there north of Merrill's shell bank. We regard that as the dividing line.

Q. What dividing line?

A. As the line between Louisiana and Mississippi; that is the line I have always known.

Q. Is that so generally regarded?

A. I think so.

Cross-examination by Mr. McCLURG:

Q. I would like for you to be a little more definite, if you can, Mr. Parker, than in saying that has been generally regarded as the dividing line between the two States, in this, generally regarded by whom?

A. Well, I should say generally regarded by oystermen, and the men who cruise out there constantly, fish there. They would refer to going over to the Louisiana shore when we got beyond that channel; that is the term that we regarded it on the coast where we were fishing constantly.

Q. I believe you stated that is of recent years?

A. Yes sir; I do not go back a very great distance; probably 20 years in fishing. Of course I have no positive knowledge in regard to the boundary line, it was only what I heard, that this is the Louisiana marsh, and that it is the channel that is generally regarded as the line.

Q. I wish you would please tell us, if you can, exactly, and if you cannot exactly, approximately, as best you may, the distance from the junction of the eastern mouth of Pearl river with Lake Borgne, around the coast to the Sabine river.

A. To the Sabine river?

Q. Yes.

A. I do not know, I have no idea.

Q. Can you tell us about what the distance is from the mouth of Pearl river to Malheureux point?

A. No sir; most of my distances go straight across the lake.

Q. Yes, I understand that it is important for me to get the others if I can. Can you say whether the deep water sailing line, or the deep water channel, which it is some times termed, is nearer the marshes than it is — the Mississippi shore?

A. It varies there; I should not think that going through Cat Island pass, it is probably more than three quarters of a mile at the outside between the southern end of Goose point and the north end of Isle à Pitre, and this channel passes right in between Cat Island pass.

Q. Did you ever notice how near that channel passes St. Joe?

A. St. Joe is wiped off the map.

Q. Where it used to be there was a light-house on St. Joe?

A. Yes sir.

Q. The light-house is north of the channel, the St. Joe light-house.

A. Yes sir.

Q. Do you know an island that is called Half Moon, now, I believe; before that, I believe it was called Grand island?

A. You mean Half Moon island?

Q. Yes?

A. Yes, I know Half Moon island.

Q. Which side of that channel is it on?

A. I would have to look at that map; it is on the south side, of course, of that island.

By Mr. DYMOND:

Q. This is the shore line. Here is your St. Joe beacon. Here is your channel here?

A. Yes sir.

Cross-examination.

By Mr. CLURG:

Q. Did you ever hear what you call the Louisiana marsh called Grand marsh by anybody?

A. No sir, I have not. They wash away there and change so much by every storm, it is hard to refer right away to a point.

Q. You have never heard any discussion prior to the institution of this suit, or within a year before the bringing of this suit, on the 27th day of October, 1902, as to where the line was between these two States in the waters down there?

A. Yes sir, I think I have.

Q. A discussion of the kind?

A. Yes sir.

Q. By whom?

A. By a number of these men handling oysters; I know quite a number of them, and I think the question first arose in regard to dredging; they used some dredges for a while in shallow water, and that was knocked out by Mississippi, and they claimed they could dredge in Louisiana waters, and they came over in Louisiana waters and dredged there.

Q. Do you know whether the Mississippians undertook to prevent dredging south of that channel?

A. Not to my knowledge; this is only hearsay, as I say, from these oystermen, whom I know, quite a number of them.

992 Q. You would not undertake to deny that the Mississippi Oyster Commission have patrolled Creole gap, Grand pass, Sundown island, in that county?

A. No sir, I have no idea about that. I have seen the boats out

here, and been sailing there with them, up with them, but did not know what they were doing.

Q. These buoys indicate——

A. Indicate the channel, and it is southeast of Pass Marianne light.

Q. Buoyed by the Federal Government?

A. I think so.

Q. For navigation, and commercial purposes, rather than any effort to indicate the line?

A. I suppose for navigation; I do not know.

Redirect examination by Mr. DYMOND:

Q. Will you please look at this map, No. 59, and as — was stated by General McClurg that Half Moon island was sometimes called Grand island, you will please look on the map and state whether you can find Grand island on that map?

A. There is Grand island, here.

Q. You have found it?

A. Yes sir.

Q. On which side, north or south of the deep water channel is that island?

A. Grand island?

Q. Yes.

A. As to the deep water channel?

Q. Yes.

A. It is north of it.

Q. Do you see the deep water channel on the map?

A. Yes sir, right here.

Q. Well, which direction do you consider to be north?

A. Why, from this side, right direct; the channel is north of Grand island.

Q. And the island is south of it?

A. You asked me which side of that channel it was; the channel is north of the island, and the island is south of the channel. You asked me a while ago——

Q. You were asked a while ago and you denied having any knowledge of any patrol or control of the waters of Grand pass or Isle à Pitre by Mississippians; do you know whether the Mississippians did have a patrol boat in the control or patrol of their oyster industry?

A. I do not.

Recross-examination.

By Mr. McCLURG:

Q. Do you know whether they had an oyster inspector or not?

A. I do not know. I only heard those points were all in dispute between the two States.

993 ALEXANDER BREWSTER, witness, sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. ZACHARIE :

Q. How old are you ?

A. I am 72.

Q. Where do you reside ?

A. I reside at 1415 Esplanade street, New Orleans.

Q. Are you familiar with the territory lying between Isle à Pitre and Malheureux point ?

A. I cannot say that I am familiar with the interior ; I have not been there more than three or four times in my life. I have been in Chandeleur sound and Cat Island pass. I am familiar with them.

Q. You say you have never been in the interior—

A. What I mean to say is I never went in through the marshes in those bayous and bays, but I have always confined myself to the Chandeleur sound and Cat Island pass.

Q. Are you familiar with the coast line between Isle à Pitre and Malheureux point ?

A. Yes sir.

Q. How long have you been familiar with that ?

A. About 1855 or 1853.

Q. Since 1853 ?

A. Yes sir.

Q. You have been commodore of the Southern Yacht Club for some time ?

A. Past commodore.

Q. You have yachted and sailed in those waters ?

A. Yes sir.

Q. Do you know what that territory lying between Isle à Pitre and Malheureux point is commonly called by Louisianians and Mississippians, so far as you know ?

A. The Louisiana marsh.

Q. Have you ever heard it called by any other name ?

A. Not until the—after the oysters got scarce in Mississippi.

Q. When did they first commence to call it—

A. I heard them say that the Mississippi government had some claim on it about ten or twelve years ago.

Q. Are you familiar with the deep water channel running from the mouth of East Pearl river and down between Cat island and Isle à Pitre ?

A. I went through that channel pretty often.

Q. Have you ever heard the boundary line between Louisiana and Mississippi discussed in relation to the bearing of that channel ?

A. Not after you left East Pearl river ; everybody that I ever heard it discussed by said that all belonged to Louisiana.

Q. All what ? All south of that channel ?

A. Yes sir.

Q. You have had conversations with Louisianians and Mississippians on the subject?

A. Many times, speaking of the deep water channel.

Q. You mean the channel that goes out from East Pearl river and runs down to the southeast between Cat island and Isle à Pitre?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. When did you first hear that discussed, Captain?

A. About 8 or 10 years ago, I think.

Q. Do you remember any of the participants in the discussion; the names of any of the gentlemen you heard discuss it?

A. No sir, I do not; they were all oystermen, though.

Q. Do you remember what provoked the discussion?

A. By some people in Louisiana stating that they came over to take the oysters, the Louisiana oysters; that is all.

Q. How long has that been since you were in that country?

A. Since I was in it?

Q. Yes.

A. I guess over ten or 12 years ago.

Q. You heard no controversy as to the State boundary?

A. No sir.

Q. You spoke of when the oysters began to get scarce in Mississippi?

A. Yes sir.

Q. Is that about 10 or 12 years ago?

A. That is the time I heard this discussion. I do not know whether the oysters got scarce or not; I am not interested in oysters.

Q. Do you know what portion of Mississippi they began to get scarce?

A. I know there was none on the Pass Christian reef. I understood that East Pascagoula had none; I understood that they got them all from Grand pass.

Q. Not having been there for 10 or 12 years, you would not be able to contradict the statement that they are more plentiful there now than they were then?

A. Possibly they are, only through transplanting, because the schooners, the last time I was down there, there were schooners getting plants south of Point Chico.

Q. What schooners, Mississippi schooners?

A. Yes sir.

Q. They fished in the neighborhood of Point Chico on up to Isle Pitre, did they not, then?

A. Yes sir, even south of Point Chico, Mitchell's point, and along that way.

Q. Especially about Grand pass and Sundown island?

A. I do not think there were many at Grand pass; I do not think they left many there.

Q. Do you know where Karako bay is?

A. I cannot say.

Q. You are not familiar with the inland of the marshes?

A. I have only been in there three or four times; then it was on business during the war.

Q. To what points did you go then?

A. I went through Nine Mile bayou.

Q. Did you go through Nine Mile bayou?

995 A. Yes sir.

Q. To what place?

A. Through Nine Mile bayou to old man Teel's place on Lake Borgne.

Q. You went from the northern mouth of Nine Mile bayou?

A. Well, I went from Biloxi; I started from Biloxi.

Q. Your next trip in there?

A. The next trip, I went to some other portions inside; that is, went in Three Mile bayou, and I came out at Point Chico, and then went inside Point Mitchell—they used to call it that, I think, then came into the River Aux Chien, back of Pointe à la Hache.

Q. What did you use for transportation through there?

A. A sailboat.

Q. What draft was it?

A. About two and a half feet.

Redirect examination.

By Mr. DYMOND:

Q. You spoke of Point Chico. Do you know how far south Point Chico is from the main land or shore of Mississippi in miles roughly?

A. Well, roughly it is considered nine miles to Cat island, is it not? from the main land?

Q. Yes.

A. Then 15 miles is what I always considered Point Chico.

Q. Then was, or was not Point Chico more than 18 miles from the Mississippi coast?

A. I wouldn't like to walk it for 18 miles on a warm day.

Q. You think it is more than 18 miles?

A. Yes sir.

Q. Then it was not in the territory in dispute in this case if the contention is confined to 18 miles from the Mississippi coast?

A. No sir.

Q. And you say Mississippians fished there some years ago?

A. Yes sir.

Q. When you speak of getting plants south of Point Chico, d

you or not refer to a better grade of oyster which cannot be gotten from Mississippi sound?

A. Well, I suppose they picked out the best they could get.

Q. Was I correct in understanding you to use the words plants?

A. Yes sir.

Q. Is that a better grade of oyster?

A. I know very little about the oyster business.

Q. How did you happen to use the word plants?

A. Because they told me they were for plants, they told me they plant oysters. They went there and got them in the summer time and they were to plant oysters for the winter, that was the time they were getting them; in the summer time, I met some of them then.

Q. Where were they to be planted?

A. I think the men said it was to plant them outside Deer island.

Q. In Mississippi?

A. Yes sir, south of Biloxi.

996 Recross-examination.

By Mr. McCLURG:

Q. How far is Point Chico east of the high tide mark on the Louisiana main land?

A. Well, now, when you come to talk about high tides, you have got me.

Q. Do you know where the high tide mark is on the Louisiana main land?

A. I don't know that anybody else knows, there is only a raise and fall of about 18 inches.

Q. Most of that marsh territory down there is inundated by the high tide?

A. Yes sir and by the eastern gales of wind.

Q. What I wanted to ask you was this, if you knew where the high tide mark was on the Louisiana main land, about?

A. You will have to start—you see that is a very long marsh and I told you I was not familiar with the marsh in particular. Now I am less familiar with the main shore because I don't know where it commences?

Q. You have never been along the main shore line?

A. I suppose that is a continuous marsh, some places it is cut up into bayous, bays and lagoons.

Q. I want to find the point where the bayous and bays and lakes and lagoons of the marsh stop and the solid unbroken land of Louisiana begins?

A. I can't inform you.

EMILE J. O'BRIEN, witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. ZACHARIE :

Q. What is your name ?

A. Emile J. O'Brien.

Q. Where do you reside ?

A. I live in New Orleans.

Q. How long have you been residing here.

A. 61 years and 11 months.

Q. That is your present age ?

A. Yes sir.

Q. What is your occupation or business ?

A. Just now, nothing.

Q. What were you formerly engaged in ?

A. In the cotton press business.

Q. You have been an officer of some yacht association ?

A. Yes sir, I was commodore of the Southern Yacht Club for eight years.

Q. What is the Southern Yacht Club ?

997 A. The Southern Yacht Club, it is an association for yacht racing and cruising etc.

Q. Composed of what members, from where ?

A. All over the city and elsewhere. We have members from all round Memphis and everywhere else, we have 800 members.

Q. Have you any members from Mississippi ?

A. Yes sir.

Q. How many do you think ?

A. I don't know ; I couldn't tell you that, but I know we have some. Dr. Robinson at the pass is one, because I had him elected a year ago and Mr. Parker is a member.

Q. Is that the principal yacht club in the South ?

A. Yes sir.

Q. Are you familiar with the territory running from Isle à l'Étre to Malheureux point ?

A. Yes sir, all that territory, I have cruised around there I don't know how many times, ever since I was a little boy.

Q. About what age did you commence ?

A. About 10 or 12 years I used to go cruising around.

Q. And you have continued how long ?

A. Well, up until the last two years. I have not been out much in the last two years. I have been going to all these regattas instead of cruising.

Q. What is the name by which that territory has been known by Mississippians and Louisianians ?

A. You know, of course, I am almost as much a Mississippian as I am a Louisianian, because we have lived at Bay St. Louis in the

house my brother lives in now, it is the old homestead my father built 60 years ago and we still reside there, but I can't remember very well that far back, but I guess I can remember about 45 or 50 years back.

Q. What has this territory which I have just spoken of and which you have just testified about been known as amongst Mississippians and Louisianians?

A. It has been known by everybody as either the Louisiana shore or the Louisiana marsh.

Q. Did you ever hear it called by any other name?

A. No sir.

Q. You say, did I understand you correctly, you say you pass every summer at Bay St. Louis?

A. I missed nine summers there, five years nearly when I was at college and from college I went to the war, so I was absent about nine years.

Q. With that exception you have been a summer resident there?

A. Yes sir; every summer.

Q. Did you ever hear this territory called by any other name by anybody?

A. No sir.

Q. Have you had frequent intercourse with Mississippians, oystermen, fishermen etc.?

A. Yes sir; I know a great many of them there.

Q. Have you heard them call this territory by any other name than the Louisiana marshes?

A. No sir; until recently.

Q. What do you mean by recently?

A. Within the last five or six years, until this commission that Mississippi got up, the oyster commission.

Q. Do you know the deep water channel that runs out of the mouth of East Pearl river down first eastwardly and then southeastwardly between Cat island and Isle à Pitre?

998 A. Yes sir, I have been through there hundreds of times.

There are two channels, what we call the deep water channel and a shallower channel. If you follow the Louisiana shore out the Isle à Pitre channel about four miles and go right along the whole coast you will see it is buoyed out; the deep water channel comes up more to the eastward and then goes out Cat Island pass.

Q. Have you ever heard that channel spoken of as being the boundary between the State of Louisiana and the State of Mississippi?

A. We have discussed it; we did not know anything about it, but we always considered, after leaving East Pearl river and following along St. Joe channel, the islands to our port or left, Grassy island; and Half Moon island, and the territory south, we always considered in Louisiana. I don't think there was any question about that, I never heard that questioned and we have discussed it hundreds of times.

Q. With whom have you discussed it, with Louisianians or who?

A. Louisianians, and Mississippians both. Every time we cruising we had a different crowd on the boat; unfortunately all of them are dead. I feel a little lonesome now—

Q. Could you mention who were the Mississippians with whom you have discussed this boundary line?

A. Well, really I couldn't tell whether they were Mississippians or not. I have discussed it with so many of them that I could not remember exactly who they all were; they were mostly Louisianians of course.

Q. And you say you never heard any question raised about this boundary line until the last four or five years?

A. No sir.

Cross-examination.

By Mr. McCLURG:

Q. If I understand you correctly, in sailing along there you would just say this is Louisiana on this side and that is Mississippi on that side?

A. Yes sir, that is the dividing channel. Leaving East Pearl river there is a channel that goes right out; in fact, it is buoyed out by the Government, the deep water channel and the shallow channel as I told you that goes right along by Grand pass and goes to Isle à Pitre until you strike Cat Island pass.

Q. Those cursory discussions about this side being Louisiana and that being Mississippi and this being the deep water channel—that has no reference at all to what the Constitution or acts of Congress or the acts of these two States designated as the boundary between the two States did it?

A. No sir; it was just general, we knew that East Pearl river was the dividing line between Louisiana and Mississippi and naturally concluded that the deep water channel would make the balance of the line.

Q. That was just a natural conclusion and not a legal deduction?

A. Yes sir, we were not studying up the subject at all.

Q. And you knew, I suppose, that if the law fixed it somewhere else, this general idea was not worth much?

A. Well, we were not naturally law breakers so of course we would have respected the law.

Q. How many islands are between Malheureux point and the northeastern end of Isle à Pitre?

A. You mean those shell banks?

Q. I mean where the land protrudes above the water?

A. I don't know.

Q. There are a great many?

A. Yes sir. There are a line of islands—I would not call them islands though, they are shell banks.

Q. Well, there are a string of those shell banks or whatever you might call them, that do protrude above the water?

A. Yes sir, they are all along that coast, north of Isle à Pitre, except where those channels are, it is all shell banks.

Q. Grassy island is north of Isle à Pitre?

A. Well, not exactly north, it is kind of north.

Q. You have referred to those islands—

A. I mean those shell banks; there are no islands there because they are just little shell banks.

Q. Between Isle à Pitre and Malheureux point?

A. In there are all shell banks, there are really no islands, they are all shell banks, outside of them is where you get the oysters, on the edges of them.

Q. You know where Nine Mile bayou is?

A. Yes sir.

Q. Have you ever gone down through that from the—

A. No sir; I have fished at the mouth.

Q. Never have been through it?

A. No sir.

Q. You have never been through Three Mile bayou?

A. No sir; I have fished along the mouth.

Q. Ever been through Johnson's bayou?

A. I have been down there fishing.

Q. You have not been through it?

A. No sir, only a half a mile.

Q. Ever been through Turkey bayou?

A. I don't know all the names of those bayous.

Q. You know where Grand pass is?

A. Yes sir.

Q. Ever been through that?

A. Only once.

Q. When?

A. 10 or 12 years ago.

Q. How did you go through it?

A. I went right through.

Q. In what?

A. In our boat, in a sloop.

Q. How much water did she draw?

A. Two feet and a half.

Q. Did you ever go through Creole gap?

A. I believe I have, I don't remember.

Q. You know where it is?

A. Yes sir.

Q. Do you know where Sundown island is?

A. No sir.

Q. You spoke a while ago about having conversations with fishermen from these two States. Is it not true that up to within the last few years, when Louisiana and Mississippi created their oyster commissions and began to give this territory some special attention

1000 that before that time Louisianians, Mississippians and Alabamians and everybody else fished anywhere they wanted to through all that country?

A. Yes, sir; however, there was never any discussions until they organized all those canneries in Biloxi and when the oysters got scarce in there, then they came up along the keys up there where Isle à Pitre is, over along there, then they commenced to dispute and there was some talk whether that was Louisiana or Mississippi.

Q. When was that?

A. That was before the commissions were even organized.

Q. How long?

A. When the oyster canneries were organized. When were they organized.

Q. I think about 1882 probably?

A. It was about 1882. They dredged all the oysters out and it was only when they got those dredge boats and cleaned out everything on the other side then they commenced to dredge in there.

Q. You are speaking from information?

A. From what I saw.

Q. Do you mean to say that you saw they had fished all the oysters out of there?

A. Nearly all, they got so scarce they were not worth fishing for any more over there.

Q. Don't you know, as a matter of fact, that they have increased in there ever since they have been fishing and dredging?

A. I don't know that.

Q. That year after year there are more oysters, the oysters have been increasing instead of decreasing?

A. I don't know that to be a fact.

Q. And there are more oysters there now than before the canneries were put there?

A. I don't know. I have not had any experience in it.

Q. The reason I ask you that question is I wanted to be sure whether you were speaking from your own personal knowledge as to the destruction of the oysters. I am sure you were not because I believe it is a mistake?

A. There is no doubt they have worked the banks pretty hard but they have formed other banks. The oystermen from Bay St. Louis come in there and sell oysters to the cannery; there is no doubt where they have killed oysters as they came along they have created new banks and those banks have been found out and been cleaned out and commenced over again. There was never any oysters at St. Joe island until a few years ago; those oyster banks have formed there, there were large banks along there but those were all cleaned out because it was so handy, but they don't go there any more, I suppose they are all gone. That I know from seeing it.

Q. They were all drowned out by a crevasse in the Mississippi River levees a few years ago?

A. That affected them some, but I don't think that was what broke those banks up.

Q. Are you prepared to say that those fishermen, Mississippians, or Louisianians or Alabamians or whoever they might have been went farther out because the oysters were scarce, rather than because their trade was increasing and they undertook to cover a broader territory?

A. I heard the Biloxi fishermen at the canneries say that was the reason they went out there, because there were more oysters out there and easier caught and tonged, that was before they got 1001 their dredges; I have heard them say so right in Biloxi.

Q. What cannery did you hear say so?

A. I don't know which one; I know there are several of them there now.

Q. There are not many there?

A. Gordon, Dunbars and all of them told me. I know nearly all of them.

Q. Do you undertake to say they went out there because of the scarcity of the oysters in the alleged territory rather than because of the increase of trade and the building up of new canneries, putting in more boats and employing more people.

A. No doubt of the scarcity of the oysters there; they certainly wouldn't make a haul of 20 miles when they could make a haul of five miles; that is business.

Q. If they had a bigger trade that demanded more oysters—

A. If they could get all they wanted at five miles they certainly wouldn't go 20 miles to get them.

Q. They might get all they wanted for a small trade but wanted more for a bigger trade.

Q. They could get them just as well for a larger trade if the oysters were there at five miles.

Q. The best oysters for the raw trade are in the marshes?

A. Yes sir.

Q. How long has Louisiana been taking oysters down there?

A. Always as far as I can remember.

Q. On both sides of the channel north and south?

A. Yes sir.

Q. And on out east of Cat island?

A. Up to several years ago there were no restrictions on anybody, as I told you, there was no dispute, they went where they pleased, they came from Alabama, Mississippi, or anywhere.

Q. So the Louisianians had some hand in depleting the supply?

A. I don't know about that.

Q. If they got any at all they did; up in that country where you say the Mississippians went south and east?

A. No doubt about that.

Q. The Louisianians went south and east?

A. No sir; I don't think they went any further than they could

get the shortest haul, as I tell you they went to the nearest place they could find them and that was along the Louisiana shore.

Q. Do you know where the high tide mark strikes the main land of Louisiana south of Malheureux point?

A. No sir, I couldn't tell you that.

Q. Most of these islands that we have been speaking of are inundated by the high tide?

A. More or less.

Q. What I want you to give me if you can, is a mark where the high tide stops on the Louisiana soil?

A. I don't think I could do that. The tide is not much any how; it rises only about a foot and a half or two feet at the most.

Q. There is a tide?

A. Yes sir.

Q. And there is a place where it stops and goes back?

A. Yes sir.

Q. Very well, that is the mark I want you to tell me if you can?

A. You know right along Isle à Pitre and right straight along Grassy island and Half Moon island you will find banks along there with weeds on them and the sea in ordinary tide never goes over them, they are made of black clay mud. But of course, in extraordinary weather the sea goes over the whole place.

Q. Does Malheureux point go under at mean tide?

A. I couldn't tell you; I never noticed it particularly. But as usual, not in places but all over it you can see where it is marked.

Q. Is it not true, according to your best knowledge of that country that that high tide does not flow far westward of Nine Mile bayou?

A. I have never been back in there.

THOMAS T. BARR, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. ZACHARIE:

Q. How old are you?

A. I am 30 years old.

Q. Where do you reside?

A. I reside in New Orleans.

Q. What business are you engaged in?

A. Manufacturers' agent.

Q. How long have you resided in New Orleans?

A. Well, approximately, I think about five years, prior to which time I was a voter in Mississippi.

Q. At what place?

A. In Waveland.

Q. How long did you live in Waveland?

A. I guess about 12 or 15 years—that was about six months during the summer; the balance of the time I would spend in New Orleans.

Q. Mr. Barr, where is Waveland?

A. Immediately adjoining Bay St. Louis.

Q. That is, in the State of Mississippi?

A. Yes sir.

Q. What county is that in?

A. It is in Hancock county.

Q. Do you know that territory running from Isle à Pitre to Malheureux point?

A. Well, I have been to Isle à Pitre but I have never been to Malheureux point.

Q. Do you know what that territory has been commonly called by the people living along the Mississippi shore?

A. Well, it has been called the Louisiana marsh.

Q. Did you ever hear it called during your twelve years' residence in Mississippi—I think you said you lived there twelve years?

A. Yes sir.

Q. Called by any other name?

A. No sir.

Q. You have mixed with fishermen and all classes of population in Mississippi.

A. Yes sir.

Q. Do you know where the deep water channel is, leading out of the East Pearl river?

A. No sir, I never have made any particular observation of that.

Q. Have you ever heard the matter of the boundary line 1003 between Louisiana and Mississippi discussed?

A. No, I have not, except as a general understanding that Pearl river was the boundary between Louisiana and Mississippi.

Q. Did you ever hear the deep water channel out of Pearl river running down between Cat island and Isle à Pitre—

A. Yes sir, I always understood, just in a general way, that was the boundary.

Q. You say you have so understood it; have you ever heard people speak of it in that way?

A. Yes sir, as a general thing along that course it was a sort of understood thing that that was the boundary.

Cross-examination by Mr. McCLURG:

Q. That sort of understood thing you speak of along the coast over there had no reference as to where the law fixed the line?

A. No sir, it was a matter of common consent, as I understood the thing.

Q. As you understood it?

A. Yes sir, it was a generally accepted thing.

Q. Well, a good many people of Harrison, Jackson, and Hancock counties; sheriffs, mayors, and other officers and men who have lived there, say it has been generally accepted as being Mississippi down there, eighteen miles from shore, because the law fixes it that way?

A. I do not know.

Q. You do not mean to say that it is a universal thing over there—

A. Going a little more into particularizing, last July a year ago, I made a little cruise along the Mississippi coast; took in Grand island, Round island and Grant pass. We were on a little schooner known as the "Ramsey Brothers," and while on the boat the men handling the boat, three boys from Biloxi, one of them named Albert George, one named Gaines—I cannot remember his first name—and the other named Albert; I think that was about the latter part of July—

Q. 1903?

A. Yes, sir, and we talked about that; and whenever we talked about the marsh and the fishing they would always state that was a Louisiana marsh, that shore immediately south of Cat island.

Q. And that is the source of your information on that subject?

A. No, as a general thing whenever we got any mosquitoes the Louisiana marshes would get the credit for it. Now these men that I refer to were oyster fishermen; one of them owned the boat; this fellow named Albert,—I have forgotten his last name—and the other two, fished all during the winter, and were making preparations to fish during the coming summer.

Q. Do you know whether the oyster commission of the two States had drawn an amicable line, a neutral line, before that time which they proposed to stand as the dividing line until this suit had been settled?

A. I believe I had heard something of that sort, but just where I do not remember.

Q. This conversation you had with those boys had it any reference to that line they had agreed to?

A. No sir, just the term applied in discussing some particular spot.

Q. You never heard anything said about six leagues or three leagues from either shore? No leagues were discussed?

A. No sir; those men that were on that boat would hardly understand the definition of leagues; they would not use that in their language.

1004 Q. So leagues were not discussed there—were not discussed at all?

A. No sir; that was beyond their comprehension; it was not in their vocabulary.

ERNEST J. BELLOCQ, witness, recalled on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. DYMOND:

Q. Will you please look at this map entitled "Hardee's geographical, historical and statistical official map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas from recent surveys and investigations and officially compiled under authority from the State legislature by T. S. Hardee, State engineer; approved under an act of the legislature, signed Benjamin G. Humphreys, governor, A. D. 1868" and state whether you were given that map by the counsel for the State of Louisiana with the request that you photograph it. The map is stamped "Library of Congress, maps and charts."

A. Yes sir.

Q. Are you able, Mr. Bellocq, to cause the whole of said map to be photographed?

A. No sir, I could not have the whole of it photographed—only a portion of it.

Q. For what reason were you prevented from photographing the whole of it? Was it lack of facilities?

A. Yes sir, lack of facilities.

Q. Will you please look at this photograph, which for purposes of identification will be called map No. 64, and state whether you caused it to be made of that portion of this map of Hardee's designated to you by counsel for the State of Louisiana, as being the area in dispute in this case?

A. Yes sir.

Q. Is it a true and correct photograph eliminating the differences in color of the Hardee map, as to the section photographed?

A. Yes, sir, it is the same thing, except the colors do not show.

Q. Now, Mr. Bellocq, why was it that you could not make a photograph of the whole map?

A. Well, I am not the one that makes photographs; I am the one that does the printing. They have to have the negative first and I do the printing. Now the one that takes the negative told me he did not have the distance in order to photograph the map. They have to get a certain distance to get it all in.

Q. What was there peculiar about that map that made that difficult. Was it too large or too small?

A. No, you could not get far enough away to get it all in.

Q. Did the size of the map have anything to do with that?

A. Yes sir.

Q. What feature of the size of the map?

A. It was too high in order to get the whole thing in.

1005 Cross-examination by Mr. McClurg :

Q. You know nothing at all about the history of the legis under which this map was made?

A. No sir, I do not know anything about the histories o maps.

Q. You know nothing about this map except what appears face?

A. That is all. A negative was made; I took the print off the negative.

Adjournment of Proceedings.

At this stage of the proceedings, the hearing was adjourned the commissioner, to be resumed at 11 o'clock September 6, 19 the same place.

Resumption of Proceedings.

NEW ORLEANS, LA., September 6, 19

Pursuant to adjournment the hearing was this day resumed 11 o'clock at the same place.

Present: Hon. W. D. Bullard, commissioner.

Hon. Walter Guion, attorney general, State of L ana.

Messrs. John Dymond, Jr., and F. C. Zacharie, ass counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the St Mississippi.

Col. CHAS. EDWARD HOOKER, witness, sworn and examin behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. ZACHARIE:

Q. Where do you reside?

A. Jackson, Miss.

Q. What is your age?

A. Well, I am getting so old that I have absolutely forgotte old I am, but I think I can acknowledge up to 70, 72, or 73.

Q. Have you held any official position in the State of Missis

A. Yes, I was elected attorney general when Governor Hump was elected governor of Mississippi. I held one term and h one term—

Q. Can you mention the date you were elected? Was it 1 1866?

A. I think it was 1865.

Q. Then?

A. Governor Humphreys was re-elected governor, and I v elected attorney general at the expiration of our first terms.

Q. When was that, what year about, your second election?

A. That was two years after our first election; the elections then were bi-annually.

Q. What other offices have you held, if any?

A. Well, I have been Representative of the congressional district in which I lived, being first elected in November, 1875, and 1006 constantly re-elected with the exception of four years when Major Barksdale was Representative, and with the exception of six years when I was out of Congress, and up to the 57th Congress, which was the last Congress I served in.

Q. Cannot you give the date so as to show the number of years—

A. In all I was about twenty years in Congress; just twenty years in Congress.

Q. Have you held any other official position?

A. In my army days, a long time ago, I was district attorney of my district in Mississippi, stretching from the Tennessee line down to Vicksburg, and going out to include Hinds county and the capital.

Q. Did you know Col. T. S. Hardee?

A. Very well.

Q. When did you first know him?

A. I knew Col. Hardee before the war, some years. I do not remember how many, probably eight or ten. I knew him during the war, and I knew him since the war.

Q. What position did he occupy, and in what army?

A. He was, when I knew him, in the army; he was the aid of his uncle, Col. Jeff Hardee.

Q. Was he an aid or an engineer officer?

A. I think he was an engineer officer.

Q. Did you know him after the war?

A. Yes sir.

Q. Where did he reside when you knew him after the war?

A. New Orleans.

Q. Where did he reside before the war when you knew him?

A. I think he resided part of the time in Mississippi before the war; after his marriage he resided in this city for some time. I was at his house on several occasions while he lived here.

Q. You mean, that is, since the civil war?

A. Yes sir.

Q. Do you know his character and reputation as an engineer?

A. Yes sir.

Q. How was it?

A. Well, I wish to say that I knew him before the war; I knew him during the war, and no man in Mississippi or Louisiana bore a higher character, socially and professionally, than Col. Sid. Hardee.

Q. Do you think from what you know of his character that he would be a man capable of entering into a corrupt job to procure money from the treasury of the State of Mississippi?

A. I should say emphatically not.

Q. Do you know what his general reputation in that regard would be?

A. One who is honorable and generally well esteemed so in Mississippi and Louisiana.

Mr. McCLURG: Mississippi is not assailing the character or reputation of Col. Hardee, and insists that this testimony is incompetent.

Q. Did you know Governor Alcorn, of Mississippi?

A. Very well, both before he was elected governor, before after the war.

1007 Q. Was Governor Alcorn's reputation or character as governor of Mississippi that he would approve or take in a corrupt raid on the treasury of Mississippi?

A. I should say not.

OBJECTION.—By Mr. McCLURG: The same objection is now made because the record will not disclose a single attack upon the personal character of Governor Alcorn.

Q. Do you now have any recollection of the preparation of map of Mississippi gotten up by Col. Hardee in 1866, 1867, 1868?

A. I have not.

Q. Did you, at any time, have any connection with any litigation in regard to that map?

A. I was employed by Governor Hardee to institute a suit against the auditor of public accounts for Col. Hardee somewhere as engineer for a certain given time, probably a month, and that suit was revived in the name of the auditor of public accounts' successor who now lives in Jackson, both Republican auditors during the Republican regime in Mississippi. I brought the suit for him to compel the auditor to issue him a warrant for his salary.

By Mr. McCLURG: Was that the mandamus case, Colonel?

A. Yes sir.

By Mr. ZACHARIE: What was the result of that suit?

A. I would not be able to tell you from memory. I think maybe I was called away from Mississippi before it was finally decided.

By Mr. McCLURG: That is the case that is reported in Mississippi's official reports?

A. Yes sir, I think it was finally dismissed. I do not remember.

By Mr. ZACHARIE: That suit has no direct connection with the map?

A. Not at all; it was simply this salary as engineer.

Q. Did you ever hear any complaint or objection made to the map prepared by Col. Hardee of the State of Mississippi in regard to incorrectness, fault or error, prior to the institution of this suit?

A. I never did.

Q. How was that map generally regarded in the State of Mississippi?

A. I do not know; I cannot say how that map was generally re-

garded; but I can only say that the high character of Col. Hardee as an engineer was such that any map he would make would receive the approval of the people of Mississippi generally.

Q. Was Governor Humphreys a man of such a character that he would approve any map of the kind without a critical examination of it?

A. No sir, he was not.

1008 Cross-examination by Mr. McClurg:

Q. I understand, Colonel, that the purport of this testimony which you have given expresses your opinion as to Col. Hardee and his map?

A. It refers to the opinion which I think was entertained generally in Mississippi by the people of Mississippi as to the Colonel in his professional capacity, and as to his work in that profession.

Q. It is your individual opinion as to what the general opinion of the people of Mississippi was?

A. Yes sir.

Q. You do not undertake to say that you have ever examined either one of Col. Hardee's maps?

A. I have not.

Q. He made one in 1868, or it was published in 1868, and there is one made in 1871?

A. Yes sir.

Q. You have not examined any one of them?

A. Only casually; I never had occasion to examine them.

Q. Now those maps pretended to be not only a map of the State of Mississippi, but including parts of Louisiana and of Tennessee, I believe, and Alabama, is it your opinion, since we are in the line of opinions, that Col. Hardee made these surveys, or did he take it up from other maps and historical data?

A. I think not; I think he made it himself.

Q. You think he made the actual surveys himself?

A. Yes sir.

Q. Do you undertake to say Colonel, that it is your opinion that Colonel Hardee took his compass and made these surveys?

A. He might have had others associated with him to assist him, for all I know.

Q. Can you tell us whether or not Col. Hardee undertook to locate the boundary between Louisiana and Mississippi on his map?

A. I understood from a casual survey of the map that he did undertake to do it.

Q. Where did he fix it?

A. I do not know; I cannot tell you.

Q. Have you examined the act of Congress admitting Louisiana into the Union, and the act of Congress admitting Mississippi into the Union?

A. Many years ago, but not recently.

Q. I asked you that question to get your opinion upon the position whether a geographer could map either State out of its territory, or whether a cartographer could paint either State out of territory, or whether the storms could wash either State out of territory, or whether the musk-rats could eat either State out of territory, or whether the winds could blow either State out of territory; or whether the mosquitoes could drive either State out of its territory; or whether any State could be deprived of any part of its territory, except by the acts of the legislators of those States, the consent of Congress. Is not that the only way a State could be deprived of its territory?

A. I do not think that either the State of Mississippi or the State of Louisiana could legislate any of its territory assigned to it by acts of admission in 1817 admitting Mississippi, and 1812 admitting Louisiana,—I do not think that either State could be deprived of its boundary according to the acts of Congress and according to the surveys made under those acts.

Q. Then is it does not matter how high the personal character and integrity, and how great his official capacity was, Col. Hardee could not map Mississippi out of her territory, given her by the Federal Congress?

A. No sir; I do not think that he would ever have attempted to do it.

Q. He was not a lawyer?

A. No sir, he was a surveyor. He was originally connected with the surveying of this road to Jackson.

Q. I have no doubt he was an accurate surveyor and a corn-lawyer, generally?

A. He made a preliminary survey of that route when a committee came from Jackson to New Orleans to suggest to the bankers and business men of Louisiana to build a road from New Orleans to Jackson. The business men here said, particularly Mr. Cason, who lived above here, "What are you going to do with the trembling prairie?" You may drive a pile down eighty feet and you will be no nearer the bottom than when you started; and the engineer came along there, cribbed the timber like you were building a house and built the road all right; and now that is the best part of the road, and Col. Hardee was one of the engineers of that road. I do not think that he would ever have attempted to change the boundary of either State.

Q. You have been in public life for forty years or more, and in national politics nearly that long, especially since the war?

A. Yes sir.

Q. And Mississippi is very proud of you, too?

A. Thank you for saying so.

Q. And none more so than I am.

A. Thank you.

Q. Now listen; speaking from your general knowledge of national politics, and I know you must be familiar with the history of this

country, and especially the South, and more of Mississippi, and incidentally of Louisiana—Mississippi, in her answer and cross bill, submits to the Supreme Court of the United States this proposition, that in framing these States out of the original territory, you understand that the purpose of Congress was to give each State a sea frontage, and substantially, when she had created Louisiana from the mouth of the Pearl river around the mouth of the Mississippi to the Sabine, about 500 miles, with a 3-league reach to her front, giving her all the islands within that limit, which I understand to mean by saying "including islands" not words of limitation, but to be sure she would get the land as well as the water; the water in that connection being general league measures, and lands in townships and ranges, that Congress must have had an eye to the balance of the Mississippi territory to the eastward, and never intended to have given to Louisiana this 500 mile reach around her front, and then let her run around to the east, and to deprive the Mississippi territory, then clamoring for admission into the Union, of her water frontage. What do you think of that proposition?

A. I do not think that the Government of the United States gave Louisiana more sea front by the three leagues than she would probably be entitled to as a State admitted into the Union, and I understand that the league front on the Mississippi shore, is larger than that. Am I right about that?

Q. Six leagues.

A. I think the idea was to give Mississippi six leagues in front of her territory, and Louisiana three leagues in front of hers, and the State boundary between them would not be governed by the fact that there were less leagues granted to Louisiana than to Mississippi. In other words they would take the territory of Mississippi, and the territory of Louisiana on the main land and run it out into the sea, and whatever fell to Louisiana the three leagues would be hers and whatever fell to Mississippi, the six leagues would be hers.

Q. As I stated to you, Louisiana has a sea frontage of about 500 miles from the mouth of Pearl river, around the passes at the mouths of the Mississippi, to the Sabine river. She claims about 1200 miles of land frontage, including the bays and the like of that. Mississippi has about seventy miles of frontage. Now then, do not lose my connection. In addition to this 500 miles, approximately, that Louisiana has, her contention now is that when you go out of the mouth of Pearl river you follow a deep water channel—it is marked on the Government map as a sailing channel, buoyed by the Federal Government—for vessels of heavy draft. Louisiana claims that this line is the line. If we were to follow that line out of the mouth of Pearl river it swings around near the Mississippi front for nearly forty miles. In some places it is within a mile of our shore, and of that seventy or seventy-five miles of frontage that we have, this deep water channel cuts off again to Louisiana about $\frac{1}{3}$ of it or more. Now then, coming back to my original question, and to get at the correct construction of the act of Congress in admitting Louisiana,

isn't it reasonable to suppose that she had an eye on the Mississippi territory in 1812, soon to become a State, and that it was the purpose and intent of Congress to save that sea front to the Mississippi territory and to the State when it should arrive at statehood? What do you think of that proposition?

A. I think the idea of Congress was to take the line between the two States and run it into the ocean in a straight line. That is my idea about it.

Q. Mississippi's contention is that in forming Louisiana in 1812 with this long sea frontage that Congress looked eastward to the front, and meant to give her that territory of three leagues reserving the frontage of the Mississippi territory for future action; and that so far as her eastern boundary was concerned, that Louisiana was limited to the common law rule of the high tide mark on her east and that Mississippi in going out of the mouth of Pearl river due south wormed along the high tide mark on the main land of Louisiana to the limit of her eighteen miles, or six leagues' point, and then swung to the Alabama line eastward, taking eighteen miles, or six leagues, from every point of her shore from Pearl river and the Alabama boundary. What do you think of that proposition?

Mr. DYMOND: On the part of Louisiana, counsel for Louisiana objects to all of this matter brought out by the recent questions from the counsel of Mississippi as irrelevant, as calling for simple legal opinions on subjects which must be decided by the Supreme Court of the United States, and not by any witness on the stand as to the construction of the two acts admitting Mississippi, and admitting Louisiana into the Union.

1011 A. Well, I still recur to my former answer, that in extending the line, the ascertained line on the land between the two States, I should say that it was the purpose and the object of Congress in admitting Louisiana in 1812, to give her three leagues of frontage, and when Mississippi was admitted in 1817 to extend that six leagues on the same line into the sea. That is my idea about it.

Q. In order that you may more readily grasp the contentions of the two States, Col. Hooker, I show you map No. 7, introduced as evidence in this case by the State of Louisiana. This is a composite map, made by the Coast and Geodetic Survey of the United States Government. I point you first to the mouth of Pearl river, and I mean by the sweep from that point around to the mouth of the Sabine river to follow southward the high tide mark on the main land of Louisiana around the passes at the mouth of the Mississippi, west to the Sabine river dividing Louisiana from Texas, our contention being that in that great sweep Louisiana gets more in water in her three leagues' limit, or nine mile stretch, than most any other State in the Union with a six or nine league limit in water reach. I show you now, beginning at the mouth of Pearl river again, eastward, a stretch of about 75 miles to the Pascagoula river,

the boundary between Alabama and Mississippi, being ten miles east of the Pascagoula river, and the reason as shown by act of Congress admitting Mississippi, when the act directed the surveyors when they got to the northwest of Old Washington county, and Alcorn county, to go due south to the gulf of Mexico, provided that if it became necessary to deflect eastward so as to prevent encroachment upon Wayne and Jackson counties, to do so; and when they came down the due south line would have reached the gulf of Mexico a great deal west of the Pascagoula river; but the act authorized the surveyors to preserve to Mississippi Wayne and Jackson counties. They deflected eastward and it put the line about ten miles east of the Pascagoula river; so that with this general description we have here three lines proposed by Louisiana, marked in blue, marked in nautical, or geographical, or statute miles. As you will notice from this map, Colonel, measuring from the high tide mark upon the mainland of Louisiana, the first proposition which suggests by this map is that nine miles from this high tide mark on her main land she would reach out almost to Grant pass, hit the Mississippi shore some distance east of Pearl river, and east of Point Clear; then if she should move up to Grant pass and take her three league limit she would go around and strike Point Clear you see, here, but move out to the end of Isle à Pitre and take her three league limit it would bring her up near the point of Ship island and right near the artificial channel that the Gulf and Ship Island railroad has cut from Gulfport across to Ship island, you understand? Now then, what would be the effect upon the commerce and navigation, and the general interests of Mississippi if Louisiana should establish her sovereignty and jurisdiction within either of those limits that are so far east of the mouth of Pearl river?

A. I should suppose it would be taking so much territory which belongs to Mississippi, and of course, as far as there is any commerce that commerce would be affected by it in that way.

Q. Have you any knowledge as to the commerce up the Pearl river into Mississippi, and on the Gulf and Ship Island railroad?

1012 A. Nothing except very generally. I know it is enormous on the railroad, and it was very enormous on the river before the railroad was built. I do not know much about the maps and the sea frontage, etc. Those three counties over here, Harrison, Hancock and Jackson counties, were at one time in my congressional district, and I was a good deal on the coast, and what I know was general knowledge as to the condition of affairs; not any specific knowledge as to the lines, either between Louisiana or Mississippi.

Q. I believe that you were attorney general at the time Governor Humphreys was ejected from the governor's office?

A. Yes sir, and I was ejected, too.

Q. Then you were marched out with him?

A. Yes sir.

Q. I would be glad if you would tell the commissioner something



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about the political conditions in Mississippi from that time up to 1875.

A. They were in a very desperate condition. The carpetbaggers and the negroes had control of everything. I never went inside of the senate or house while the negroes and carpetbaggers had control of them. We were elected in 1875 by a special law of Congress, and a special law of the legislature fixing the election in Mississippi in November, 1875, for congressional districts, which usually occurred on even years; but John R. Lynch was then in the Congress of the United States and he had a special act passed making the election in 1875 in Mississippi for Congressman and in 1875 for governor, and Humphreys and I were candidates. I was first elected in 1875 and I remained in Congress about 18 years, and I was out six years, and then I was in the 57th Congress, which would make it twenty years in all that I was in Congress.

Q. What sort of a legislature did Mississippi have during the time that Ames and Alcorn were governors?

A. Extremely ignorant.

Q. Dominated in a large majority by negroes?

A. Yes sir, negroes and Republican allies—carpetbag allies.

Mr. ZACHARIE: Of course I renew here on the part of Louisiana the same objection in regard to opinion evidence by the witness on law points.

Redirect examination by Mr. ZACHARIE:

Q. Colonel, you consider the Mississippi sound as an arm of the gulf of Mexico, do you not?

A. I think so, yes sir.

Q. It is a part of the gulf of Mexico, is it not?

A. Yes sir.

Q. Now part of this sound runs up near this disputed territory. Under the act admitting Louisiana into the Union it is specified that her boundaries shall include all islands within three leagues of her coast. That was in 1812. Now the act admitting Mississippi into the Union in 1817, specifies that it should include all islands within six leagues of the shore. The act admitting Louisiana uses the term three leagues from the coast. Now when we get into this disputed area that part of the Mississippi sound is only about ten miles across, that is, leaving the east of Pearl river and going over to the land which lies south of it, and there is a space of water there which is about nine or ten miles wide. Now, construing these two acts, would not the boundary of Louisiana extend three leagues north from her coast?

A. I could not say about that.

Q. You could not?

A. No sir.

Q. You recognize the fact that a prior grant would, of course, outrank a junior grant?

A. Yes sir, of course.

Q. Now you recognize, of course, if this territory, these islands and territory, were granted to Louisiana in 1812, and there was a conflict afterwards on the boundary of Mississippi, the prior grant to Louisiana would rule?

A. I should think the prior grant would rule.

Q. You recognize that under the Constitution of the United States that no territory could be taken from any one State without the consent—

A. Yes sir.

Q. You have been interrogated in regard to the interference there would be with the commerce of the Mississippi coast in case the contention of Louisiana was sustained. Is it not a fact that in so far as navigable waters are concerned, whether included entirely within a State, or between two States, applying as well to rivers, ocean, arms of the sea, etc., that the navigation of those waters is under the control of Congress?

A. I so understand.

Q. Therefore, that being the case, how could the maintenance of the contention of Louisiana, if it be maintained, interfere in any way with the commerce of the ports on the Mississippi shore?

A. I should say that it would not interfere with the commerce on the rivers, where the rivers were the line; or on the sea, where the main channel was the line; it would not interfere at all, because it is open to both parties.

Q. Well, would it interfere with the navigation of any navigable waters leading to these Mississippi ports?

A. I take it, it would not.

Q. The only interference would be in preventing Mississippians from taking oysters from the Louisiana territory, if Louisiana's contentions were maintained?

A. Well, I do not know about that; that is a question I never made any study of.

Q. Then the conclusion is that if the contention of Louisiana was maintained, the United States having control over the navigation of all navigable waters, that Louisiana could not in any wise interfere with commerce directed to ports in Mississippi, whether export or import?

A. I should say not.

Recross-examination by Mr. McCLURG:

Q. With reference to the interference with navigation and sovereignty of Mississippi, about which Col. Zacharie asked you, in case the sovereignty and jurisdiction of Louisiana should be extended out to the artificial line between Gulfport and Ship island, and strike the Mississippi shore east of Bay St. Louis, or if the secondary line, which is three leagues southwestward towards Louisiana, or the other line, shown on map No. 7, offered by

the State of Louisiana, and to which I called your attention a few moments ago, do not you think that if the sovereignty and jurisdiction of Louisiana were extended that far along the Mississippi front, that besides the mere navigation of interstate commerce that it would conflict very seriously with the commercial interests of Mississippi with reference to the enactment of laws such as Louisiana now has requiring all oysters taken within her jurisdiction to be brought in their raw state to Louisiana, and prohibiting the raw oysters from being taken out of the water into any other State in their raw condition. Would not such a condition of affairs seriously interfere with the commercial interests of Mississippi?

A. I should think so, yes sir.

JAMES J. CONWAY, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. ZACHARIE:

Q. How old are you?

A. Well, I am 76, and if I live until October, next, I will be 77.

Q. Where do you reside?

A. In the city of New Orleans.

Q. How long have you resided in New Orleans?

A. 12 years.

Q. Where did you reside before you came to New Orleans?

A. Chatawa, Miss.

Q. How long did you reside in Mississippi?

A. Well, since the end of the war, steadily.

Q. Since the end of the civil war?

A. Yes sir; that was since 1865. I was in Mississippi, however, from 1853 to 1858. I built that old Jackson railroad, the New Orleans, Jackson and Great Northern railroad.

Q. Then after the war, from what date to what date?

A. From 1865, let me see, 12 years; that would be 1892.

Q. What is your profession?

A. Civil engineer.

Q. During what time have you practiced your profession?

A. Up until about 1892; I was connected with the Illinois Central railroad.

Q. When did you commence to practice your profession?

A. In 1853.

Q. Did you know Col. T. S. Hardee, now deceased?

A. Intimately.

Q. When did you first know him?

A. In 1853. We were young engineers together on the road.

Q. On which road?

A. On the New Orleans, Jackson and Great Northern.

Q. Did your intimacy and acquaintance with him continue up to his death?

A. Not so intimately as before that, because I was in camp with him, and I was associated in constructing that road with him, and afterwards I knew him in 1866, in Chatawa, when he was making a map of the State of Mississippi; he moved into Louisiana after that.

1015 Q. Do you know what pains and what steps he took towards making this map of Mississippi?

A. I know that he was very particular to get the best information he could of the boundaries of counties, public roads and towns, and every thing like that, but I was not with him at the time he was making the map. I would see him occasionally; but I know he was very particular about making that map.

Q. Did you ever know of the fact that he was receiving reports and maps from county officers in Mississippi?

A. I know he corresponded with them, and received letters from them about describing or answering the questions he would propound to them.

Q. What was his reputation in his profession?

A. First class; he was a very bright man.

Q. You knew nothing of his army history?

A. No sir; I knew he was with his uncle, General Hardee. I learned that afterwards.

Q. Do you know what his personal character was?

OBJECTION.—Mr. McCLURG: That is objected to because his personal character has not been assailed by Mississippi.

A. First class.

Q. Do you know whether he was a man who, from his general character, and from your knowledge of him, would enter into any corrupt bargain with the legislatures of Mississippi for the purpose of getting himself selected to produce this map?

A. It is not possible that he would do it; he was too honest and too honorable a man.

OBJECTION.—Mr. McCLURG: Objected to.

Q. You say you knew him before the war?

A. Yes sir.

Q. Since 1853?

A. Yes sir.

Q. Did you know him when he was residing in Mississippi before the war?

A. We were together from that time when on service in the construction of the road from New Orleans to Jackson, Miss. I had charge of the division south of Jackson, from Jackson and Crystal Springs; the track was laid in 1858, and he was between Osyka and Crystal Springs, with the other engineers, and it was a long distance, and we got the tracks together in April, 1858, at Crystal Springs.

Q. Do you know where he was when the civil war broke out?

A. I think, and I am satisfied, he was up planting on Deer creek.
 Q. Do you know who was in partnership with him?

A. I understood General Wirt Adams.

Q. During your residence in the State of Mississippi did you ever hear any objection or complaint being made about his map or any of the details contained on his map?

A. No sir.

Q. Have you seen his map referred to often or at different houses?

1016 A. Well, I had it in my house when I lived at Chatawa.
 Q. Have you seen it in any public places?

A. Yes sir.

Q. Did you ever hear any question made as to the correctness of any of its details?

A. No sir.

Q. Do you know what public positions Colonel Hardee occupied?

A. Well, I don't know, since he left the war you know—

Q. Do you remember if he occupied any positions in Louisiana as State engineer or city engineer in the city of New Orleans?

A. Yes sir. He was city engineer and I think, I don't remember, I think he was State engineer, I know he was city engineer.

By Mr. McCLURG:

Q. When?

A. Well, I don't think I could tell you the dates, the year.

Q. Before or after the war?

A. After the war, long after the war.

By Mr. ZACHARIE:

Q. Do you know what his politics were during the time you have known him?

A. His was mine, we were Democrats together always.

Cross-examination.

By Mr. McCLURG:

Q. Mr. Conway, I understood you to say that Colonel Hardee was a very particular man in the line of his profession?

A. I think he was a very competent man, yes sir.

Q. And from your general knowledge of him you testify you think he must have been particular in making this map; you did not see him make it?

A. That was the impression made on me, I have occasionally gone there and seen him draw off a township and put it down, but I did not see the whole map being finished, I was not with him at the time, I was employed then with the I. C. railroad and not where he was living.

Q. Where did you live at the time he made this map in 1868 and 1871?

A. I was living in Magnolia, Mississippi, I think, after 1867.

Q. Where did he live in 1868 and 1871?

A. I know he was down at Chatawa in 1866 and 1867 and probably 1868. He built a very fine house and lived there when he was making that map.

Q. Where did he live when he was in partnership with General Wirt Adams?

A. He was living up in Deer Creek. That was before the war.

Q. You say you know he corresponded with county officers?

A. Yes sir.

1017 Q. You think that he took as a basis for his map from the correspondence of that kind?

A. That I can't say that he took that altogether.

Q. Can you say of your personal knowledge whether Colonel Hardee ever ran a line himself in making that map?

A. That I can't say.

Q. Is it not your deliberate opinion that he made that map from that he gathered up by correspondence and historical matter and other maps and things of that kind, rather than having made the surveys himself?

A. I can't say that it was all from information he got from county officers, because he may have done so without my knowing that he made the surveys.

Q. When we reduce the proposition to the last extremity and ask you for your personal knowledge as to how he made this map, what have you to say. Eliminating your knowledge of the man, and the extraneous matter, altogether, give us your personal knowledge of how he made this map. What are you willing to swear to of your own knowledge?

A. I could not swear that he did not run some lines, I could not do that because—

Q. You only have general information of the man and his methods?

A. Yes sir.

Q. You don't know whether the map is a correct one or not?

A. Well, I have no reason to doubt but it is correct.

Q. I didn't ask you that. Have you ever examined it technically?

A. No sir; portions of it I did, as I did a good deal of surveying in Pike county myself, that was where we lived then, and very often I had to refer to his map about the townships and sections.

Q. Did that map have any section corners or starting points or bearings on it that aided you in any way, did it have anything but the general topography—

A. The general topography; I could find the corners myself; I had no trouble in finding the corners.

Q. The map aided you in a general rather than in a special way?

A. I had no trouble in finding the corners and the lines were per-

fectly plain, at that time, it was pine wood Is, all blazed lines, and finished corners.

Q. You have lived in New Orleans during the last 12 years?

A. Yes sir.

Judge FRANK A. MONROE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Judge Monroe, are you Justice Monroe of the supreme court of the State of Louisiana?

A. Yes sir.

Q. How old are you, Judge?

A. I am 60 years old. Just past 60.

Q. Were you previous to that, the judge of the civil district court of the parish of Orleans?

A. Yes sir.

1018 Q. Have you ever held any other official positions outside of judgeship of these two courts?

A. Well, I was judge of the third district court before the civil district court was organized.

Q. When was that?

A. That was between 1876 and 1880. I was elected judge of the third district court first in 1872.

Q. Did your family at any time live on what is known as across the lake on the Mississippi coast?

A. Well, my own immediate family, no, that is to say my wife and children, except to spend the summer there; but other members of my family, before I was married, my aunts and grandfather and grandmother lived at Pass Christian and died there.

Q. Did you ever have occasion to frequent the neighborhood of Pass Christian?

A. Yes sir; when the war closed, in the fall of 1865, I went to Pass Christian for the first time, and circumstances, bad physical condition, want of money, kept me there for about a year and I have been more or less connected with Pass Christian from that time to this, have gone there very frequently, sometimes spent the summer, after I was married. But my aunts have lived there permanently and my grandfather and grandmother lived there until they died, so I have kept up my connection pretty close with Pass Christian.

Q. Were you ever familiar with the country in that locality and more particularly in the marshes south of Bay St. Louis?

A. Well, I cannot say that I had any great familiarity. I have cruised around there in small boats. I have been to those islands, Cat island and Ship island, I have been over to this Isle à Pitre and

have cruised around there more or less, not a great deal but several times.

Q. Will you please look at this map No. 59, and state whether you recognize the territory south of Bay St. Louis as being the territory concerning which you have just testified?

A. I cannot say that I have ever been farther west, down here, now what is that island?

Q. Grand island?

A. I cannot say I have ever been farther west than Isle à Pitre. My cruising has generally been down through Cat Island channel, down here to the Chandeleur islands, and then sometimes around up on the other side of Cat island and Ship island and over in the direction of Mobile. I have never been down here in this marsh, no.

Q. To what State, so far as you were able to ascertain from being thrown in contact with the people in that locality, is this marsh recognized as belonging?

A. I have always heard it referred to as the Louisiana marshes.

Q. Did you ever hear it claimed by any one to be part of the State of Mississippi?

A. Never.

Q. To what State was Isle à Pitre recognized as belonging?

A. I always understood it belonged to the State of Louisiana. The island itself belonged to my former law partner, he bought it while we were practising law together.

Q. What was his name?

A. Henry J. Leovy.

Q. Do you recall whom he bought it from or how he acquired it?

A. No sir. He had rather a speculative turn of mind; he bought lands here and there. I know that he bought this island
1019 and held it for a number of years and while he owned it I went there on an occasion.

Q. Did anyone ever dispute his ownership, on the part of Mississippi, so far as you know?

A. No sir. I think he sold it to probably Mr. Gilmore or somebody else.

Q. Did Mr. Leovy live in Pass Christian or have a home there?

A. He had a residence there, his domicile was in New Orleans but he had a residence in Pass Christian up to a very few years ago, from 1865, in fact from before the war, he owned a house there when the war closed and he bought another one.

Q. Did you ever while you were in that locality within the last 20 years, have any discussion with any one as to the boundary between Louisiana and Mississippi?

A. No sir, I never heard the question discussed at all.

Q. Did you know Col. T. S. Hardee, civil engineer and surveyor?

A. Quite well, yes sir.

Q. Did you know him to have made an official map of the State of Mississippi?

A. I was aware of that fact, I saw the map.

Q. What was Col. Hardee's general reputation as a civil engineer and surveyor?

A. He stood very high in this community, he was city engineer at one time I think, probably might have been from 1876 to or somewhere along there, I don't remember the exact years, and was quite a near neighbor of mine, lived across the street from me and I knew him quite well, knew his family.

Cross-examination.

By Mr. McCLURG:

Q. Prior to the institution of this suit, had you ever heard any discussion as to the location of the boundary between these two States in the waters down there?

A. I don't think I ever heard any discussion. I think that recently before the institution of this suit I saw the matter referred in the papers in connection with the possibility of a suit or arbitration of it or something of that kind, that was about the intimation I had there was any difference between the two States to their boundary.

Q. I understand you to say that it was your understanding, I am not sure but what you stated it was the general understanding as your information extended that this marsh territory down there belonged to the State of Louisiana. I want to ask you if that part of your testimony was based on a kind of general understanding rather than any discussion of the boundary from a legal point of view?

A. It was based upon what I believed to be the general understanding. I have always heard this district that is represented here as sort of an archipelago on map No. 59, referred to as the Louisiana marshes and at Pass Christian not infrequently they are afflicted with mosquitoes and when the wind would come from the southwest the mosquitoes would come in great quantities and they were always spoken of as coming from the Louisiana marshes down there, and those marshes that lay to the southwest of this Isle à Pitre.

1020 Q. You know that you have in your State what are called the Florida parishes?

A. Yes sir.

Q. And because they bear that appellation the people do not regard them as in any way belonging to the State of Florida?

A. I am aware of that fact. The term goes back to the history of those parishes, the history of their acquisition.

Q. You are not prepared to say that the Louisiana marshes may not be historically connected the same way with Louisiana before the organization of the State?

A. Of course I do not know why they were called the Louisiana marshes except that I suppose that other people, like myself, supposed they were a part of the State of Louisiana. I may add that

that impression has been more or less strengthened in my mind by reason of the fact that so far as I know all the maps that I have seen, represent these marshes as being part of what may be called the peninsula of Louisiana.

Q. I think you will agree with me on the proposition that if the territory in fact belongs to Mississippi by a proper construction of the acts of Congress admitting these two States into the Union that Mississippi cannot be deprived of it by the general understanding as to their being Louisiana marshes and therefore a part of Louisiana, or mapped out of it?

A. Of course I would not have any hesitation in expressing my own opinion on that subject; but I imagine that is a question that the Supreme Court will have to determine after they have heard all the evidence and examined all the authorities.

Q. But strong testimony like yours will go a long ways in aiding the court in the construction of those statutes?

A. I do not think any map maker or anybody else can individually deprive a State of its territory that belongs to it by law.

Redirect examination.

By Mr. ZACHARIE:

Q. As counsel for Mississippi has asked a legal opinion from you I will ask of you another legal opinion. While cartography or map making will not always determine territorial rights in disputed boundaries, is it not a principle of law as announced by the Supreme Court of the United States that maps will be taken into consideration as evidence of the long acquisition and acknowledgment of certain boundaries which will not be disturbed after long usage of that kind?

A. I should imagine so, where there is any disputed question the courts usually endeavor to get information where they can and ancient maps and ancient titles are usually offered and are taken into consideration.

1021 EDWARD WENTZELL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I live in Biloxi in the State of Mississippi.

Q. How long have you lived there?

A. Going on 24 years.

Q. How old are you?

A. 24; I have lived there all my life.

Q. So you were born and raised there?

A. Yes sir.

Q. Your family lived there before you?

A. Yes sir.

Q. Are you the Mr. Wentzell that was a partner of Mr. Ahern a grocery and bar-room business at Three Mile bayou?

A. Yes sir.

Q. Who attended to the obtaining of the license—

A. Mr. Ahern attended to that.

Q. From the United States?

A. Mr. Ahern attended to all that.

Q. Will you please look at this envelope which is marked Document 96, from the Treasury Department, dated October 30, 1901, addressed to Ahern and Wentzel, Biloxi, Miss., and state whether you recognize that as the envelope containing the license which was originally sent to Biloxi?

A. I could not say for sure, but I think it is exactly like the one we received.

Q. Will you now look at these several documents, marked numbers 90, 91, 92, 93, 94, and 95, and state whether you recognize them to be bill-heads of your firm as conducting business in Three Mile bayou?

A. Yes sir, they are exactly like it.

Q. Are they some of your bill-heads?

A. Yes sir, they look exactly like the ones we had.

Q. Who caused those bill-heads to be printed?

A. I had them printed.

Q. You will notice that those bill-heads read Three Mile, Louisiana. How was it you happened to put the word "Louisiana" after the words "Three Mile"?

A. I supposed that Three Mile was in Louisiana.

Q. This Three Mile bayou, where you were located, was that the Three Mile that you referred to on your bill-heads as being the locality where you were doing business?

A. Yes sir.

Q. Will you look at this map, No. 59, map of Louisiana, and upon being shown Isle à Pitre to the east and Mallory point to the west and Bay St. Louis immediately north, is this the Three Mile bayou right along the shore between Isle à Pitre and Malheureux point, at which you conducted your establishment?

A. Yes sir.

Q. Is that the Three Mile bayou to which you had reference when you printed your bill-head as Three Mile, Louisiana?

A. Yes sir, the same place; our place was located right there, right inside of the mouth.

1022 Q. And you thought then you were in Louisiana when you had those bili-heads printed?

A. Yes sir, I did.

Cross-examination by Mr. McClurg:

Q. Do you know whether the State of Louisiana required a State revenue license to conduct a retail liquor business?

A. I never had anything to do with the license, I just gave my partner the privilege of signing my name to the internal revenue application we made.

Q. I know about the United States revenue, but I ask you about the State revenue?

A. No sir.

Q. You did not know of it?

A. No sir.

Q. You knew that Mississippi did require—

A. No sir, I did not.

Q. And for a retail liquor business a revenue license?

A. No sir.

Q. You did not have either a State revenue license from either Mississippi or Louisiana?

A. No sir.

Q. Was there a post office at Three Mile?

A. No sir.

Q. Did you and Mr. Ahern run a bum boat in connection with this fancy grocery, wine and liquor business?

A. No sir; he had another partner, a man by the name of Sillinger; that was the year before.

Q. He was the man that ran the bum boat?

A. Yes sir.

Q. Mr. Ahern testified in this case that that was a temporary shop down there you built up.

A. Yes sir, that is to say it was—I have not been out there since.

Q. You just dealt with the fishermen in that vicinity?

A. Yes sir.

Q. You did not know what State you were in and did not care?

A. No, I thought we were in Louisiana, but I did not know exactly.

Q. You never heard any discussion about boundary?

A. No sir.

Q. Mr. Ahern stated he thought you put Louisiana on the bill-heads because the man from whom you bought the store had them on his. Do you remember about that.

A. No sir.

Q. When was it you quit business down there?

A. 1902 I think it was.

Q. About the first of October, 1902?

A. No sir, it was April.

Q. 1902?

A. I think it was in 1902.

Q. Would you say whether it could not have been in 1903?

A. No sir, it was in 1902.

Q. The reason I ask you this question is because Ahern testified, I think, that after the commissions made this dividing line and shut the Mississippians out it was not very profitable to all of you,
1023 and you went and quit the business. Did he stay there any while after you did?

A. No sir, we both left together.

Q. So notwithstanding you had your bill-head marked Three Mile, Louisiana, you did not know where the line was, did not much care, and heard no discussion of that subject?

A. No sir.

Q. You were down there for revenue only?

A. Yes sir.

Q. Standing squarely on the Democratic platform?

A. That is it.

Captain STEVE MELOCHE, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. DYMOND:

Q. Where do you live?

A. I am living in Biloxi.

Q. You say you live in Biloxi, Mississippi?

A. Yes sir.

Q. How long have you lived there?

A. About two years.

Q. Where did you live prior to that?

A. Right here in the city of New Orleans.

Q. How old a man are you?

A. I am 57.

Q. Were you born in New Orleans?

A. No sir, I was born in Bay St. Louis.

Q. Well, how long did you live in Bay St. Louis after you were born, before you moved?

A. I suppose I lived there until I got about 14 years old.

Q. Then where did you move to?

A. I moved to New Orleans.

Q. Then did you live in New Orleans continuously from the time you were 14 years old until when?

A. Until here about two years ago.

Q. And then you went to Biloxi?

A. Yes sir.

Q. What has been your business for the last 25 or 30 years?

A. Running schooners, steamboats.

Q. Whereabouts, through what section of the country?

A. From here to Mobile and all around the lake shores, you know, around Mississippi sound, Lake Maurepas, all through that area as far as Pensacola.

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Q. Are you familiar with the area all along the southern coast in Mississippi sound?

A. Yes sir.

Q. How long have you been familiar with that section of the country?

A. You can say ever since I was born, since I was big enough to know anything I was around that country; been following it up all my life.

Q. Have you, as a matter of fact, been following it up, the water area, so to speak, in that general locality since you were a small boy?

A. Yes sir, ever since I started to running on schooners I have been running out that way.

24 Q. Will you look at this map, No. 59, offered by the State of Louisiana, and state whether the water area therein shown on the east mouth of Pearl river through Mississippi sound to Cat land, and south and east is part of the area concerning which you have had your experience?

A. I have had my experience all over through here.

Q. You are well acquainted with the territory shown on this map, No. 59, of Louisiana?

A. Yes sir, I know all about it; I have been carrying shells and everything out here.

Q. Have you ever been down there, through the Louisiana marshes?

A. I have been all through it.

Q. Frequently?

A. Yes sir, I own a piece of land right here.

Q. When you say "here," what part of the map is that?

A. This is Bayou Boudreaux.

Q. Is that near Oyster bayou?

A. No sir, I do not know where Oyster bayou is.

Q. You will notice towards the centre of this map Oyster bayou, there is Three Mile bayou just a little to the westward?

A. Here is my place here.

Q. When you say here, do you mean just east of Three Mile bayou?

A. Yes sir, the first bayou to the east of Three Mile bayou.

Q. What name is on *the* that map, can you see?

A. It is called Bayou Boudreaux, but some of them call it Bayou Johnson.

Q. This is called Bayou Johnson on the map, is that the bayou you refer to?

A. Yes sir, because I know how it was made.

25 Q. Were you thrown into contact with Mississippians and other people, working, travelling, and fishing through that general locality, as shown by map 59, during the past 25 or 30 years?

A. Of course.

Q. You will please notice the territory beginning on the east at Isle à Pitre and extending west to Malheureux point, to what State has that territory been recognized as belonging in the opinion of people with whom you have been thrown in contact, within the last 25 or 30 years?

A. Louisiana.

Q. Did you ever hear any one say that that belonged to Mississippi?

A. No sir, I never did.

Q. What was it called? What was the name given to that particular territory?

A. The Louisiana marshes; it has always been called that since I could recollect; the Louisiana marshes.

Q. Did you ever hear any discussion as to what was the boundary between the States of Louisiana and Mississippi in the waters of Mississippi sound?

A. Yes sir; I heard them talking about that many times.

Q. What is the boundary?

A. The channel.

Q. What channel?

A. Cat Island channel, we call it Cat Island channel.

Q. Is that the channel that runs through Mississippi sound north of Half Moon island, and thence up Pearl river?

A. Yes sir.

Q. Was, or was not that channel recognized as the boundary between the two States by people with whom you were thrown in contact whenever the question came up for discussion?

A. Yes sir.

OBJECTION.—Mr. McCLURG: That question is objected to as extremely leading and extremely suggestive of the answer.

Q. Where were you living at the time you bought that land?

A. Right here in the city.

Q. Who attended to that for you?

A. An old surveyor by the name of Duke.

Q. Where did he live, do you know?

A. No sir; I don't know exactly; he lived here in the city, but what place I do not know.

Q. Was application made to Mississippi to buy that land?

A. No sir.

Q. Who did you buy it from?

A. The State.

Q. What State?

A. Louisiana.

1026 Q. Was any application made to the land office of Mississippi to see whether they made any claim to land in that locality or held any land for sale?

A. Well, Casimir Harvey wanted to enter this place called Creole gap—

Q. Is that on Isle à Pitre?

A. It is right close to Isle à Pitre, same side as Isle à Pitre, it is between Isle à Pitre and Grand pass, and they wrote to Jackson and they didn't have any records of it there and they came back to the custom house and found out where it was and they got this same old man Duke to write to Baton Rouge and get a patent.

Q. When you speak of Jackson, do you mean Jackson, Mississippi?

A. Yes sir.

Q. Is that the State capital of Mississippi?

A. Yes sir.

Q. And Baton Rouge is the State capital of Louisiana?

A. Yes sir.

Cross-examination

By Mr. McCLURG:

Q. Who wrote that letter to Mississippi?

A. Casimir Harvey.

Q. You didn't write it yourself?

A. No sir.

Q. He told you he wrote it?

A. Yes sir.

1027 Q. You know nothing about it except what he told you?

A. No sir.

Q. You never saw the letter?

A. No sir.

Q. You never saw the answer to that letter?

A. No sir.

OBJECTION.—Mr. McCLURG: The testimony of this witness with reference to this correspondence, is objected to because it is secondary and hearsay merely.

Redirect examination.

By Mr. Dymond:

Q. Is Casimir Harvey living?

A. Yes sir.

Q. Where is he located?

A. At Back bay, Biloxi.

Q. Is this surveyor Duke living or dead?

A. He is dead.

Q. Is there any one else connected with this particular transaction concerning which you have testified, other than yourself and Mr. Casimir Harvey that are still living?

A. Joe Gilmore. He owned some land down there too.

Q. Did Mr. Joe Gilmore have any connection with this application which you speak of?

A. He did with old man Duke; you know they were all mixed up in it when they made the application.

Q. Old man Duke made the survey?

A. Yes sir.

Q. Are you at all familiar with the interior of the Louisiana marsh?

A. The interior?

Q. Yes? What I mean is south of the shore line extending from Malheureux point to Isle à Pitre, all down in this section?

A. All down through here clean to the mouth of the river and the other side of the river.

Q. When you speak of the river, you mean the Mississippi river?

A. Yes sir.

Q. Now, Captain what is the general tendency in this section of the Louisiana marsh just south of the shore line from Isle à Pitre to Malheureux point in regard to any influence from the deposits of the Mississippi river; what is the general tendency, is it to increase or disintegrate and break up?

A. It breaks up and washes away.

Q. Have you noticed any difference between the first time you saw it understandingly and the last time you saw that country understandingly, has there been any difference in its general appearance on the interior?

A. Yes sir. These keys out here have washed away, this country key is submerged altogether; you can sail all over it on a schooner we used to load shells off of it.

Q. Are there any other instances where there has been noticeable change so far as you are able to state within your memory?

1028 A. There was a little island right in Grand pass that was washed away, that was a little bit of an island there, it came up in a point, that is gone now, there is only one island there where there used to be two.

Q. How about down in the interior?

A. Some places you will find four feet of water and next time you go down there and you won't find but two.

Q. Well, look at that map of this country south of this shore line between Malheureux point and Isle à Pitre and picturing the thing to yourself as it is to day and as it was when you first saw it 20 or 30 years ago, is there any greater proportion of water there now than there was 20 or 30 years ago, as compared to the land?

A. No, I don't think there is.

Q. You think it is about the same thing?

A. Yes sir.

Q. The level of the prairie is about what, tide level or what?

A. Yes sir, high tide just comes up even.

Q. It has just staid about that level for the past 20 or 30 years?

A. Yes sir.

Q. That is all covered with vegetation?

A. Covered with marsh grass.

Recross-examination.

By Mr. McCLURG:

Q. The proportion of land and water has about maintained itself since you have known it, in that marsh country?

A. Yes sir,

Q. You stated that you had regarded this marsh territory as belonging to Louisiana for how long?

A. Well, I will say for 35 years.

Q. I believe you also stated that it was generally so regarded by those with whom you talked, did you?

A. Yes sir.

Q. Well, if it was generally so regarded, why was it that you applied to Mississippi for the purchase of that island?

A. I didn't apply there.

Q. Well, then, some of those with whom you talked to applied there, didn't they?

A. Yes sir.

Q. Then they had some doubt about it?

A. They must have had or else they wouldn't have done it.

Q. Then you were not exactly correct when you said they all agreed that it belonged to Louisiana, were you?

A. No sir; that's right.

Q. It is a matter of fact there has been some doubt about which State that marsh belonged to, among some of the people?

A. With Harvey Pit must have been or else he wouldn't have wrote that.

Q. Is it not true, until within the last few years when Louisiana and Mississippi organized their oyster commissions that all of this disputed territory in the marshes and in Mississippi sound was fished upon promiscuously by people from Mississippi, Louisiana and Alabama?

A. Why of course they all fished there together.

1029 Q. Mississippians and Louisianians would fish side by side?

A. Everybody fished there together.

Q. And wherever they wanted to?

A. Yes sir.

Q. Any questions asked about the State boundary?

A. I never heard any.

Q. They didn't care?

A. No sir.

Q. They were after the luscious bi-valves?

A. Yes sir.

Q. You never heard of anything like a threatened armed conflict between the sheriff and officers of St. Bernard and the sheriff and officers of Harrison county Mississippi over that territory?

A. No sir.

Q. It has all been quiet along the Potomac?

A. Yes sir.

Q. Did you ever hear anybody from Mississippi or anywhere else, refer to that marsh land or any part of it as the Grand marsh?

A. No sir.

Q. You live in Biloxi?

A. Yes sir, for two years, that is all.

Q. How long ago?

A. Two years last July, since I moved over to Biloxi.

Q. You are living there now?

A. Yes sir.

Q. Are you in the oyster business now?

A. No sir.

Q. What business are you in?

A. I have schooners running here in the basin with sand and shells.

Q. You have schooners running here?

A. Running to New Orleans with sand and shells.

Q. Where do you get your sand and shells?

A. I get my shells at what is called Doer point, that is a place that belongs to me.

Q. How much land do you own there by Bayou Johnson?

A. I think about 200 acres.

Q. You bought it from the Lake Borgne Basin Levee board?

A. No sir, I entered it in the State.

Q. When?

A. About 12 years ago.

Q. You bought it from the State of Louisiana?

A. Yes sir.

Q. How much of it is land and how much water?

A. Well, I don't exactly know, but I think about half of it. It takes the bayou right straight down on each side of the bayou.

Q. For what purpose did you buy that land?

A. I bought it for the shells, there was a shell bank there at one time and I bought it for that.

Q. You never have lived there?

A. No sir.

Q. There is no industrial life of any kind there, farms or gardens or habitations, except fishermen camps?

A. That is all.

Q. And never has been?

A. Never has been.

Q. Did you get a patent or deed or anything of that kind to that land?

A. Yes sir.

Q. Where is it?

1030 A. At my brother's house here in town. I got two patents, I have got two places down here, one at Doer point and one on this bayou.

Q. When did you get the other one?

A. At the same time.

Q. Do you remember what you paid for that?

A. 12—12 cents per acre.

Q. Your title was not warranted?

A. It was a regular patent and signed by the governor.

Q. That is true, but what I wanted to know is, whether they undertook to give you a warranty deed to it or merely a release from a claim by the State to it?

A. No sir.

Q. Do you remember whether you applied for it as a part of swamp or overflowed lands?

A. Overflow lands.

Q. Does your patent recite, if you remember, when that land was approved to the State of Louisiana?

A. I don't know whether it does or not.

Q. You don't remember that?

A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. Were you summoned as a witness for the State of Mississippi in this case, in Biloxi?

A. No sir.

Q. Do you know Mr. Heidenheim of Biloxi Mississippi?

A. Yes sir.

Q. Did he have charge of getting up the evidence for the State of Mississippi, or rather, not for the State of Mississippi but for the people in that city interested in pressing the claims of Mississippi?

A. I don't know whether he did or not.

Q. Were you interviewed by anybody in regard to testifying in this case?

A. No sir.

Q. What was the date, Captain, that this man Casimir Harvey applied to the State land office of Mississippi or of Louisiana for the land you have referred to, about how long ago?

A. I guess it is about 12 years ago, somewhere along there.

Q. Did he get a patent?

A. Yes sir, he has got a patent.

Q. From the State of Louisiana?

A. Yes sir.

1031 Judge LAWRENCE O'DONNELL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. Where do you reside?

A. I reside in the city of New Orleans.

Q. How long have you been residing here?

A. In the city of New Orleans for 40 years.

Q. How old are you?

A. I am 62.

Q. What is your occupation?

A. I am an attorney at law.

Q. Have you ever held any official position in the State of Louisiana?

A. Yes sir, I was parish judge for the parish of Plaquemines and I was district attorney here for about 12 years, I also served as State senator.

Q. Are you familiar with that territory lying to the south of the Mississippi shore running from Isle à Pitre to Malheureux point?

A. I am not familiar with it, I know of its location.

Q. Have you ever coasted along there in yachts?

A. Yes sir.

Q. Do you know what the name of that territory goes by amongst Mississippians, Louisianians and the people generally?

A. I have generally heard it alluded to as the Louisiana marsh.

Q. Have you ever heard it alluded to by any other name?

A. No sir, I did not until the claim was set up in this controversy growing out of the oyster industry of which this is a part.

Q. You never heard it called Grand marsh or any other name prior to that time?

A. No sir.

Q. You have been a yachtsman?

A. Yes sir, for many years.

Q. Are you a member of any yacht club, if so what?

A. I am a member of the Southern Yacht Club and at the present time fleet captain, and have served in pretty near every capacity in that club from commodore down and my present position there is fleet captain.

Q. Do you know or have you ever heard from general information where the boundary between Louisiana and Mississippi was considered prior to the institution of this suit?

A. Yes sir, from the mouth of the Pearl river, the East Pearl river, the channel that runs through and leaves St. Joe to the right, called Pass Marianne, and down along there between Isle à Pitre and Cat island.

Q. Does that channel run north of Grand island, Grassy island, Round island and the other of the Malheureux islands there?

A. Yes sir, it does, but there are so many grassy islands, it seems that every little island in the lake——

Q. I am speaking of an island known, up there, Grassy island and Grand island sometimes known as Half Moon island, that channel runs along that——

A. Yes sir.

Q. Can you state from your knowledge whether that deep water channel was generally considered, prior to the institution of
1032 this suit, by both Mississippians and Louisianians as being the boundary between the two States?

A. I never heard it disputed, Colonel, by anybody.

Q. You mean by that, it was generally admitted?

A. It was generally admitted. I never heard the question brought into controversy until the oyster industry attained such prominence as it has and each State is trying to define its right and control of it.

Q. How often in your life have you visited that territory?

A. I couldn't tell, it has been so often I couldn't say.

Q. About how many times?

A. Do you mean visited the territory?

Q. Passing along there?

A. How often?

Q. Yes, as near as you can remember?

A. Certainly a couple of hundred times.

Q. Have you, or have you not, had intercourse with the fishermen there both from Louisiana and Mississippi?

A. Yes sir, I know a great many of them.

Q. Have you ever talked with them about the points which you have testified about?

A. No, I have not.

Cross-examination.

By Mr. McCLURG:

Q. Not having talked with them about it, Judge, your statement with reference to its being universally or generally admitted that the boundary lay in Cat island channel is based upon the statement of Louisiana people?

A. Well, Louisiana, and Mississippi people conceded it, I never had a general conversation, there was never any necessity for it, it was a thing generally understood.

Q. You said you never heard it disputed?

A. Yes sir.

Q. But yet you say that it is generally admitted to be——

A. To be generally understood, everybody always alluded to it as the Louisiana marsh.

Q. You do not undertake to testify, Judge, as I understand it, that the people along the Mississippi coast, and Mississippians generally, admit or understand, that this is the boundary between the States?

A. Not as to boundary but they always alluded to that land.

Q. I am talking about the channel, the boundary line?

A. About the channel, no, only alluded to that land as the

ana marsh.

Q. You do not undertake to testify that it is regarded by the people of Mississippi?

A. No sir.

Q. But it has been admitted, as you understand it, by the people of Mississippi?

A. Yes sir.

Q. But never has been questioned as far as you know?

A. It never has been questioned. As I stated in part of my examination—I want to get clear on this thing—as I stated
1033 Col. Zacharie, I never heard it disputed at all until this controversy arose, until the oyster industry assumed the portions it has within recent time.

Q. So if there had been no controversy, how could there have been an admission, how can you admit a thing that has never been brought in controversy?

A. I will tell you how. In sailing and cruising from place to place along the coast I was brought in contact with other yachtsmen and whenever they talked about taking an excursion or going on a cruise, they always alluded to that part of the place as the Louisiana marsh.

Q. Without any reference at all to the legal status?

A. Without any at all.

Q. Have you ever had occasion to examine the acts of Congress admitting these two States into the Union?

A. I did but it is so long ago, really—

Q. You never made any critical examination—

A. No sir.

Q. You never attempted to run out the lines under the construction of those two acts?

A. I had a case some years ago in which I defended some men that were arrested;—they were in court down at Plaquemines fishing, and I cleared my men on the ground that they were fishing the waters of Mississippi, and then I made that the subject of the controversy that they were beyond the other side of this pass between Isle à Pitre and Cat island, I believe they were fishing on the reef inside of Cat island.

Q. There have been several similar cases in Mississippi?

A. Yes sir.

Q. And your defense was they were within the 18 mile limit of the Mississippi shore?

A. Yes sir, they were fishing inside of Cat island.

Redirect examination.

By Mr. ZACHARIE :

Q. To the eastward you mean of Cat island ?

A. Between Pass Christian shoal and Cat island.

By Mr. McCLUNG :

Q. When was that ?

A. That has been a long time ago.

Q. What law were they violating ?

A. They claimed—I don't remember now, it is so long ago I really can't think of the controversy, but I know some men were arrested—they formed some association, some protective oystermen association or something, do you remember about it, Colonel ?

Mr. ZACHARIE : No, I have a poor recollection.

Q. You don't remember the year ?

A. No sir.

Q. You don't remember the offense with which they were charged ?

A. They were charged by those men with fishing. I don't believe there was any offense under the law, that is how I got them off and

I showed they were not fishing in the State of Louisiana that 1034 they were on the Mississippi side.

Q. What were they charged with ?

A. They were charged by the protective association with fishing in the waters of Louisiana.

Q. Without a license ?

A. No sir, there was no license law then that I know of.

Q. I am anxious to find out the law they violated.

A. I don't think it was any law that was violated, it was over a regulation of those fishermen. Now, I tell you what I think, there were some months in which fishing was prohibited.

Q. By State law or by an agreement among the fishermen ?

A. I am inclined to believe it was by agreement among the fishermen. It is so long ago and I never thought of the matter since.

Q. How long has it been since you lived in Plaquemines parish ?

A. It has been quite a number of years.

Q. About how many to your best knowledge ?

A. 15 years.

Q. Plaquemines parish is south of the parish of St. Bernard ?

A. Yes sir.

Q. It is not in this disputed territory at all ?

A. No sir.

Q. You understand that ?

A. Yes sir. I have a summer residence at Waveland, Missis-

1035
sippi.
Q. In visiting your summer residence and in coasting, and your visits generally out in that territory, until these laws were inaugurated, of recent date, that territory was regarded as common ground

for Louisiana and Mississippi and Alabama and all comers generally, was it not?

A. I can't say that, but I can say this, that before this, the fishermen from all along there didn't question who owned that, they just went and fished wherever they could find their product and brought some of it to the old basin for consumption in New Orleans and then afterwards when the factories grew up they fished and brought oysters to the factories on the Mississippi coast.

Q. You never heard anything of an armed conflict threatened between the officers of the two States, over that boundary, I mean prior to the bringing of this suit?

A. I did hear at one time, I can't state from my own knowledge, but I did at one time hear that a man named Captain Young held some sort of a commission or authority and warned fishermen off from—

Q. Of what State was Captain Young?

A. I was told at the time that he represented the State of Mississippi.

Q. Captain Young in the State of Mississippi?

A. Yes sir. He used to own the yacht *Nepenthe*, he was a yachtsman. He had some sort of a public office, but I am only stating this as hearsay.

Q. About when was that?

A. I suppose that was eight or nine years ago; I don't state that as a fact.

By Mr. ZACHARIE:

Q. In this case in which you defended those Mississippi fishermen—

A. No, it was Louisiana fishermen, Austrians.

Q. Louisiana fishermen, your—as I understand it your defense was first, there was no law against people fishing there; it was simply an agreement between the fishermen?

1035 A. Yes sir.

Q. And secondly, that the point at which the fishing was charged was that it was southeast of Cat island and that it was not within the waters of Louisiana?

A. Yes sir.

Q. The question of 18 miles or six leagues from the Mississippi shore only figured in the case in order to show that Cat island and the waters southeast of it were not within the boundaries of the State of Louisiana?

A. Yes sir.

Adjournment of Proceedings.

At this stage of the proceedings, the hearing was adjourned by the commissioner to be resumed at 2.30 p. m.

Resumption of Proceedings.

2.30 P. M.

Pursuant to adjournment the hearing was resumed at this hour at the same place.

OSWALD OGDEN, witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. ZACHARIE :

Q. Where do you reside ?

A. At present I am living at Waveland, summering there.

Q. How long have you been going to Waveland during the summer ?

A. I have been going there almost my entire life, about 33 years.

Q. What is your occupation ?

A. At present I am superintendent of the garbage in the department of public works.

Q. Do you know the territory lying between Isle à Pitre and Malheureux point and the territory south of the shore of Mississippi ?

A. I do, in a way, I have been along there quite a number of times when I was a youngster, but I have not been there for a good many years.

Q. Well, during your summer residence, at Waveland you say ?

A. Yes sir.

Q. What has this territory been known as, what name has it gone by amongst the people along that Mississippi coast ?

A. I have always known it and always heard it spoken of as the Louisiana marshes and as part of the Louisiana holdings, as belonging to Louisiana.

Q. Did you ever hear it called by any other name ?

A. No sir.

1036 Q. Do you know anything about what is reputed to be the boundary between Louisiana and Mississippi in those waters ?

A. I don't know that I do. I always heard the deep water out there was as a general thing supposed to be the dividing line.

Q. What do you mean by the deep water ; do you mean the deep water channel ?

A. Yes sir.

Q. Do you mean the channel that comes out of East Pearl river and then goes down between Cat island and Isle à Pitre ?

A. Yes sir.

Mr. McCLURG : I believe I would like to have the counsel let the witness state what he thinks.

A. That is what I meant to say.

Cross-examination.

By Mr. McCLURG:

Q. How old are you?

A. I am thirty three.

Q. You speak of it being always considered, the line, as the deep water channel. What do you mean by saying that that has always been considered the boundary between these two States?

A. I don't know whether I said that or not. I said that I was always under that impression.

Q. How long have you been under that impression?

A. Ever since I was able to reason.

Q. Where did you get that impression?

A. I don't know that I can answer that. I don't know that anybody has ever told me particularly.——

Q. In other words, as a matter of fact, by pinning you down to what you are willing to swear on your oath, you can't say where the boundary between the two States is?

A. No sir.

Q. You said you always heard that the Louisiana marshes were in Louisiana. Where did you get that impression or that information?

A. Well, by just referring to the marshes down there by various people living along that coast.

Q. Along the Mississippi coast or the Louisiana coast?

A. Along there by Waveland.

Q. You know most of those people, officers, and those who have had to deal with political matters, have testified they considered as belonging to Mississippi 18 miles out from the Mississippi shore?

A. I don't know anything about what, what they have testified, I have not followed this case, I have not read any particulars of it.

Q. I do not mean to be captious with you at all, but you are making your statement pretty broad and I want to get it down as near the facts as I can; that is the reason I call your attention to the fact that my people stated they claimed——

A. I don't know anything about that.

Q. As far as your information goes you have passed the
1037 opinion that the Louisiana marshes belonged to Louisiana and the deep water channel is the boundary line?

A. Yes, sir, that is my impression.

Q. Now, then, you know, I must find out the best I can upon what that opinion is based?

A. To come close down to it, the only person that I can recall having spoken to on the subject is my father; he has lived over there for 50 years and he is entirely familiar with that section and I always heard him speak of it as that.

Q. As the Louisiana marshes?

A. Yes sir.

Q. There was no question ever brought up so far as your father

forming you, as to any controversy or dispute as to the boundary line?

A. No sir.

Q. You know there are some parishes in Louisiana called the Florida parishes?

A. Yes sir.

Q. They do not belong to Florida because they are called Florida parishes?

A. No sir.

Q. And you don't imagine for the same reason that the Louisiana marshes belong to Louisiana?

A. They might not, I can't swear they do.

Q. So far as the legal features of this case are concerned, and what I mean by that is, the acts of Congress admitting the two states, you never have examined them?

A. No sir, I know nothing about it.

Dr. JOSEPH T. SCOTT, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. What is your age?

A. I am 35.

Q. Where do you reside?

A. I live in New Orleans.

Q. What is your occupation?

A. I am a physician.

Q. Do you hold, or have you held any official position?

A. Yes sir, I am an officer in the Marine Hospital Service.

Q. Of the United States?

A. Yes sir, acting assistant surgeon.

Q. Have you been in the habit of visiting during the summer season at any time, if so, when, the Mississippi sea coast?

A. Well, about, off and on, for the past 25 or 30 years, ever since I was a child.

Q. Do you know that territory which lies between Isle à Pitre and Calheureux point south of the Mississippi coast?

A. Well, I know it from having hunted and fished down there some years ago, I don't know anything definitely about the topography of the country, I just know about where it is, I know how to get there.

Q. Do you know what that territory is generally called by the people along the Mississippi coast?

A. Yes sir, it is called the Louisiana marsh.

Q. Have you ever heard it called by any other name?

A. No sir.

Q. Do you know whether it has been considered, or not, as a part of Louisiana?

A. I have always been under the impression it belonged to Louisiana.

Q. Do you know what has been the general impression up to the institution of this suit amongst the people along that coast?

A. The general impression was it was the Louisiana marsh, Louisiana territory.

Q. Do you know anything about the boundary line between Louisiana and Mississippi?

A. Except that Pearl river is the boundary between the two.

Q. I mean after leaving Pearl river, do you know anything about any particular channel?

A. No sir, I couldn't say positively. I was under the impression that all west of Pearl river was Louisiana.

Cross-examination.

By Mr. McCLURG :

Q. You do not think it is possible for Mississippi to be delimited out of her territory just because the people may call it something else do you?

A. No sir.

Q. Now, then, these impressions you speak of, they are formed upon a sort of general talk and without any sort of reference to any definite legal line?

A. I couldn't say, I don't know, I couldn't answer.

Q. I mean, you said you had an impression?

A. I always heard it called that.

Q. What do you mean by always?

A. Any time the subject was brought up in talking about going hunting or fishing.

Q. Generally by Louisiana people?

A. No sir, they were Cadians over there. I always heard it called the Louisiana marsh.

Q. I mean of——

A. Mississippi.

Q. You mean that you have always heard the Mississippians call it the Louisiana marsh?

A. The people over there, Mississippians and anybody.

Q. You never struck up with any one that called it Grand marsh?

A. No sir.

Q. What has been your association with the Mississippi people over there?

A. I have associated with all of them over there——

Q. Mississippians or Louisianians——

A. All along that coast.

Q. Who are interested in this suit.

A. With the people who are natives over there.

1039 Q. You mean along the coast?

A. I mean along Waveland, Bay St. Louis and Nicholson avenue. I guess I could name all I know over there, Mississippi summer residents and people that live off the visitors.

Redirect examination.

By Mr. ZACHARIE :

Q. You own property over there?

A. No sir.

Q. Not now?

A. No sir, never have owned property. My father always leased a place.

Recross-examination.

By Mr. McCLURG :

Q. You have no idea where the legal boundary is between these two States in those waters?

A. No sir, I couldn't swear to any legal boundary.

By Mr. DYMOND :

Q. Did you ever hear any Mississippian at any time in your experience make any claim that that territory south of Bay St. Louis known as the Louisiana marshes, belonged to Mississippi, prior to this suit?

A. I couldn't cite any particular case, I couldn't name any one man who had so declared.

Q. Did you ever hear anybody without naming any one. Did you ever hear any one claim that this territory belonged to the State of Mississippi?

A. No, sir, I never did.

By Mr. McCLURG :

Q. You never heard anybody specifically name it belonging to the State of Louisiana?

A. No, sir, I did not. I thought it was generally understood that it was Louisiana territory.

Q. You just thought that?

A. I always heard that. They always claimed that if there were any flies in the shape of mosquitoes they came from the Louisiana marshes, they laid it all on Louisiana.

Q. You do not propose for the mosquitoes to settle the boundary between two sovereign States?

A. I don't think he is going to do it either.

Q. He may communicate yellow fever and other diseases, but I don't think he will settle the State line?

A. No, sir, he will not.

1040 LOUIS H. FAIRCHILD, witness sworn and examined on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Where do you live ?

A. My home at present I consider in New Orleans. I have been sort of shifting. I have lived in Bay St. Louis, Mississippi, I have resided and voted there since 1871 up until the last election for Congressmen, I think at the time Bowers was first elected I think about a year or more ago. Since then I concluded to make my domicile here in Louisiana, but I have been a citizen of Mississippi for about 30 years.

Q. How old are you ?

A. I am fifty-five.

Q. During these 30 odd years, at what point in Mississippi did you live ?

A. Bay St. Louis and Waveland which is a part of Bay St. Louis.

Q. During your residency there, were you thrown in contact much by acquaintance or otherwise with the natives of that locality ?

A. Yes sir.

Q. Are you fond of fishing and hunting, etc. ?

A. Yes sir.

Q. Ever make excursions and have you made excursions on fishing and hunting trips ?

A. Numerous times, yes sir.

Q. Ever had occasion to go into the marshes south of the Mississippi shore, south of Bay St. Louis ?

A. Yes sir.

Q. From the acquaintance you had with the people with whom you went over there, what was the name that that territory generally received ?

A. Louisiana marshes, that is, if I understand right the territory you refer to.

Q. The territory south of Waveland ?

A. Yes sir, south of Waveland.

Q. Creole gap and all those places ?

A. Yes sir.

Q. Between Malheureux point and Isle à Pitre. Here is Isle à Pitre to the right and Malheureux point to the left with Bay St. Louis immediately north ? (referring to map No. 59.)

A. Yes sir.

Q. To what State was the ownership of this territory attributed, the territory concerning which you have just been testifying ?

A. To Louisiana. I never heard it spoken of as anything but Louisiana.

Q. Did you ever hear, in your experience of 30 years as a voter

in Mississippi any claim made that this territory belonged to Mississippi?

A. No sir, I never heard it discussed. I never heard any claim made either.

By Mr. ZACHARIE :

Q. Did you ever hear it called by the name of the Grand marsh?

A. No sir, I have always known it as the Louisiana marshes,
1041 that is all.

Q. Is that the name—

A. I know as a Mississippian we always cussed Louisiana for the musquitoes we got from that marsh.

By Mr. McCLURG :

Q. Didn't you cuss the marsh also?

A. We always cussed it in the name of Louisiana, we always said when the wind was from the southwest we will have musquitoes.

By Mr. DYMOND :

Q. Do you know what was regarded as the boundary between the two States in that general locality?

A. No sir; I never heard the boundary discussed between the mouth of Pearl river.

Q. You understood Pearl river to be the boundary at that point?

A. Yes sir.

Cross-examination.

By Mr. McCLURG :

Q. So far as the water boundary was concerned, after leaving Pearl *Pearl* river, you never heard that discussed?

A. No sir.

Q. And you have no idea where it is?

A. No sir.

Q. All you know is, when the southwest winds brought musquitoes you cussed the Louisiana marshes?

A. That's right. That is all I know. As I stated I have always heard this territory spoken of and referred to as the Louisiana marsh and never as the Mississippi marsh.

Q. But you never heard any controversy as to which State it really belonged to?

A. No sir.

Q. And because you have heard it called the Louisiana marsh you expected that marsh land as belonging to the State of Louisiana?

A. Yes sir.

Q. And that is the sum total of what you do know about it?

A. That is all.

Q. You never heard anything of any threatened armed conflict between Louisiana and Mississippi over the boundary out there?

A. No sir.

EDGAR H. FARRAR, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. You live in the city of New Orleans?

1042 A. Yes sir.

Q. You are a member of the firm of Farrar, Jonas & Kruttschnitt, the senior partner, I believe?

A. Yes sir.

Q. The firm of Farrar, Jonas & Kruttschnitt is one of the principal law firms of the city of New Orleans?

A. It is so regarded.

Q. How old a man are you?

A. I was 55 years on the 20th day of last January.

Q. Have you, in your life, ever had occasion to live or spend any time on the south coast of Mississippi which is commonly called by us "across the lake"?

A. From 1879 to 1901 I spent the majority of my summers, nearly every summer, either at Pass Christian or at Mississippi City, generally at Pass Christian. During that period my family remained over there for two whole winters.

Q. On these visits and trips you made, did you ever have occasion to make any fishing excursions, or anything of that sort, to the country and islands south of the Mississippi coast?

A. Very many.

Q. Did you ever visit the locality around Isle à Pitre which is shown on this map No. 59, of Louisiana, as being a little southeast of Hendersons point?

A. I have been on fishing trips to all of the keys which lie south of this channel, this channel south of Cat island, and these marshes, and I have fished all along this marsh and on two occasions I went with a party from New Orleans, fishing, into what some one of them called Grand bayou here——

Q. Grand pass?

A. Through Grand pass out to the Chandeleur islands and back.

Q. Were you thrown in contact, on any of those trips, with any fishermen or natives of the Mississippi coast?

A. Yes sir; schooner captains and sailors. I have been on a great many fishing trips out there. We would arrange with a schooner captain to meet us at either Pass Christian or Bay St. Louis or at Mississippi City or at Biloxi and we would take the train from here and go over there and take the schooner and go out and fish for two or three days, a week sometimes and sometimes ten days. Then, in

addition to that, when I would spend the summer over the lake, why, there were a lot of people there who had schooners and fishing boats and I would hire a boat and go out on these fishing trips. And then on other occasions I have gone with men like John Parker and Sam Heaslip and Mr. Bob Ogden and other gentlemen who owned their own fishing boats and were accustomed to go to these places fishing.

Q. These captains and crews of the boats you have referred to, were they generally native Mississippians or people living over there?

A. Always. They were people who owned schooners and vessels that were used in this trade around there, either for fishing or other purposes.

Q. Were they familiar with the locality to be visited by you?

A. They appeared to be. We would tell them to take us to such a key or Isle au Pied and they always seemed to know where to go.

Q. Now, Mr. Farrar, amongst those people by what name was this territory known, that is, the territory beginning at Isle à Pitre and extending westward and southward?

A. Well, all of the keys and these marshes which lie south of this channel through here, were known as the Louisiana marshes, Louisiana coast.

1043 Q. Were they so known by the people living along the coast of Mississippi, so far as you were able to ascertain from your intercourse with them?

A. Yes sir. That was the common name of all of this territory over here. Louisiana marshes was its popular name, that everybody spoke of it by.

Q. Did you ever hear anyone ever claim that that was a part of the State of Mississippi because it was within 18 miles of the Mississippi shore and was islands?

A. Never. I never heard there was any such claim until the State of Louisiana began to enforce her oyster law two or three years ago and the packers and canning people began to grumble and set up the claim that that was in Mississippi.

Q. Did you ever hear discussed as to what was the boundary in the waters of Mississippi sound, between the two States, prior to the institution of this suit?

A. It was always understood that the boundary between the State of Mississippi and the State of Louisiana, was the line of the main channel south of Cat island and in front of Pass Marianne light; for instance, Merrill's shoal bank, as it was called, was supposed to be a Louisiana key, and these keys out here, Dog key, and Pelican key, which lie south of that channel towards Isle au Pied, were called the Louisiana keys.

Cross-examination.

By Mr. McCLURG :

Q. If I do not misunderstand you, Mr. Farrar, when you say, it has always been understood that these islands and keys which you have just mentioned have been considered as Louisiana territory or belonging to the possessions of this State, that that understanding has grown out of a kind of a general understanding without any sort of reference to the legal features of the case?

A. I am simply telling you what the popular notion was, and time the popular view of the matter was. Of course I had never looked into the question and I do not suppose that anybody else had looked into the question critically, but that was the general and public impression and view, that this territory over here was Louisiana territory.

Q. The general public view and impression of the people of Louisiana or Mississippi?

A. Of the people all along that coast who live there permanently, Mississippians or Louisianians?

A. Mississippians, and among Louisianians and everybody; there was never any dissent, as I understood it, from that opinion.

Q. I want to say to you that we have taken the testimony of a great many people in Jackson, Harrison and Hancock counties, and it has been universally testified to by judges and district attorneys, mayors and marshalls and constables, steamboat captains, owners, pilots, and humble citizens, who have no political distinction at all, that they have regarded and the State of Mississippi has exercised sovereignty and jurisdiction 18 miles from shore south of it. I mention that to show to you there must be some mistake in everybody being of that opinion?

1044 Mr. DYMOND: To which statement of counsel for the State of Mississippi, counsel for Louisiana enter an objection, because the record will show that the counsel is mistaken in his interpretation of the evidence of the witnesses for the State of Mississippi, and that those who have testified in regard to Harrison and Jackson counties referred to the islands within 18 miles distant from the shore of Mississippi where there is no controversy.

A. It was always conceded, as I understood the matter, that is, the public understanding, that all of the islands such as Cat island, Ship island, Round island, Grand island, and all those islands adjacent to the Mississippi shore, were parts of Mississippi; but that the marshes and the keys which lie south of Cat island, form part of the Louisiana territory, and if those people ever had any such notion they kept it to themselves so far as I was concerned, because within my knowledge, no such opinion ever prevailed among the people that I came in contact with along that coast at any time in 30 years.

Q. Well—

A. I have been going out there since 1873. My first fishing visit to that locality was made in the summer of 1873.

Q. Well, is it not true that you came in contact mostly with people who were there during the summer time for recreation and pleasure and not with the sturdy solid working people along the coast and those who were interested in the permanency—

A. I came in contact with all sorts of people; with fishermen and schooner men and the permanent residents there, and of course a great many people from the city of New Orleans.

Q. And did those people with whom you came in contact with agree with you that that sailing line buoyed by the Federal Government for vessels of heavy draft, the Cat Island channel, around to the mouth of Pearl river was the boundary between these two States. You do not undertake to say that, do you?

A. I mean to say that the public impression which I gathered from contact with the people over there, and from going out there fishing, and from talking about going fishing, and from negotiating with fishermen and schooner people, was, that that territory over there was Louisiana territory.

Q. You mean the territory south of—

A. The territory south of that channel including these keys, including the keys and what is called Isle au Pied, I call it that, some people call it Isle à Pitre and some people call it Isle au Pied. It was supposed—or, as I always understood, that the island had originally the form of a human foot and it was called Isle au Pied which was corrupted into Isle à Pitre.

Q. Some of the old fishermen have testified it got its name from Isle au Pied, Isle of Tracks, they said they were coon tracks.

A. *Pied* in French, means foot in English. Whether it got it from *pied* or the foot of a coon or whether it got it from the shape of the island, I don't know, but I always understood that it was called Isle au Pied or Foot island and that it had that name because it had the shape originally of a human foot or a foot.

Q. The bill of complaint in this suit copies from the act of Congress admitting the State of Louisiana into the Union in 1045 1812. Omitting other parts describing the boundaries of the State of Louisiana, the act, as I read it, from the original bill, in connection with the boundary under discussion, now reads this way "thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said gulf to the place of beginning, including all islands within three leagues of the coast." I read that to you, Mr. Farrar, because I know you are a good lawyer and I think you want the right thing done in this case no matter how it falls. I call your attention to the fact that Lake Borgne is not mentioned in that description, "from Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the coast." I would like you to state to the commis-

sioner, even though you be an adverse witness, and a stout one, who the words "including all islands within three leagues of the coast" not used within the contemplation of the act to show that not the three leagues which usually means water measure, as I understand it, in connection with that, but any islands which are described by land descriptions, townships, ranges, sections; it not meant to give Louisiana jurisdiction and sovereignty three leagues from her main shore in water territory, subject of course the common right of navigation, and that saying including islands, to be absolutely certain that she not only got the water and sovereignty of the water surface subject to the common right of navigation, but also she got the islands within that reach.

A. If I should be called upon, as a lawyer, to interpret that act of Congress, I should have to go back and find out what the boundaries of the Louisiana territory as acquired from the French government were, and to determine whether or not it was the object and purpose of Congress to include in the territory of Louisiana the same territory as that acquired under the treaty from France. It appears to me that after you have determined which of this territory and the islands came to Louisiana from France, and what the boundaries of that territory were as acquired from France, then, it was the intention of Congress to include that same territory in the territory of Louisiana and I would reject any interpretation of the act of Congress which would draw a line leaving out of the State of Louisiana any portion of the territory acquired from France which had originally formed a part of this grant from France. It appears to me that that would be the light that would guide me in my decision in interpreting that act of Congress. Now, I do not know what those exact boundaries were; I do not know whether the islands, or whether this territory here was included in the grant from France to the United States. If it was, I should say that the reasonable interpretation of that act is that it was the intention of Congress to transfer all of that property to Louisiana. If that property was not within the territory acquired from France, why, that would have to be settled by comparison with other acts of Congress, comparing the two together, to see what the intention of Congress was. If this territory was included in the Louisiana territory then, as I said, it was evident that Congress intended to include it in the State of Louisiana. If it was not included in the Louisiana territory, 1046 but belonged to the United States by some title acquired prior thereto, why, I should say it would be very doubtful whether it was the intention of Congress to put this territory in Louisiana.

Q. Now, look at the map No. 7, of Louisiana, now before you. I want to call your attention to some perfectly patent matters and ask you please to favor us with your views upon that subject because we are trying to get, as I understand it, the construction of the acts admitting Louisiana and Mississippi into the Union. I say two acts, but really there were three, Louisiana having two. You

notice here the mouth of Pearl river on this map No. 7 introduced by Louisiana in evidence in this case; that, following her contention, from the mouth of Pearl river there, around to the mouth of the Sabine river dividing Louisiana from Texas, that there is something like 500 miles sea frontage of the Louisiana coast, and from the mouth of Pearl river to ten miles east of the Pascagoula river, or 70 or 75 miles is the sea frontage of the Mississippi coast. It is alleged in Mississippi's answer and cross-bill to the complaint of Louisiana, that the Congress, in forming these two States out of the territory which it had previously acquired, intended to give each State a sea frontage, and if we are correct in that construction, our contention is that in giving Louisiana her sea frontage here, Mississippi still being a Territory, that it was not the purpose or intention of Congress to so form the State of Louisiana as to cut off from the State of Mississippi, evidently then soon to become a State, as to shut her off of almost half when measuring from the northeast point of Isle à Pitre with her three league limit which passes northeast of the boundary, to a point directly between Gulfport and Ship island, and leaves Mississippi no sea frontage at all from Ship island to the mouth of Pearl river only from the western end of Ship island to the western part of Petit Bois island immediately south of the Alabama line. I have tried to state it to you as succinctly and plainly as I can, and ask you to say what you may desire to, upon that proposition. I mean to say by the proposition, in general, the idea of Congress in giving to each State or Territory a sea frontage to the south, and that according to Louisiana's contention she not only gets a southern frontage but an eastern frontage and a northern frontage.

A. It is impossible for me to say whether Congress, in the absence of positive evidence on the subject, had any theoretical view about the division of the sea front of these States. I very much doubt whether the Congress, individually or collectively, even the drafters of this act, had, at that time, any definite geographical knowledge of this locality, and that the act was drawn with their usual carelessness which characterizes the drafting of all important legislation in American legislative bodies, and that these acts were not referred to the topographical authorities of the United States for examination, and that they went, as most of our legislation, by happy go lucky guess work. That is the history, in my judgment, of the conflict between these two States. Because of the ignorance of the men who drew those acts.

Q. That is precisely what I expected your answer would be, for the reason that the Congress never undertook to define the line from the mouth of Pearl river, and if there is any line for either
1047 State out of the mouth of Pearl river it must be supplemented by judicial construction, and according to one of the theories of counsel for Mississippi, for there is nothing mentioned in the act of Congress except to the gulf of Mexico—

A. The general rule under those circumstances would be, that the

line should follow the main line of the main channel, the central thread of the main channel from that point to the gulf of Mexico.

Q. No. That is the general rule so far as the channels are concerned; I mean river channels or streams usually carrying what is commonly termed channels, between two States. But in the high seas that have ebbs and flows of the tide, they have many channels.

Q. You cannot call any of this territory between the islands and the coast, the high sea, for the reason that it is an extremely shallow, flat, country which is navigable only along certain lines. It is nothing but sand flats covered with shallow water, with a channel running through them here and there. It could not be called the high seas at all, from my point of view.

Q. That is true; we all know that now; but Mississippi sound and Lake Borgne and Pascagoula bay and things like that? They have been named almost 50 years after the act of Congress. The question is whether or not Congress considered the first touch of these great waters to the south as the waters of the gulf of Mexico. Mississippi sound, as we have found in the examination of these maps and historical matters, so far as my present recollection serves me, was not known on any map until about 1866; Lake Borgne is mentioned in the act admitting Mississippi to which I will now call your attention by reading from the original bill of complaint in this case which says—referring to the line now under discussion—"thence due south to the gulf of Mexico; (meaning the line between Mississippi and Alabama) thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne; thence up said river to the 31st degree of north latitude." There is some ground for the belief that prior to 1817 that even Lake Borgne itself was considered by Congress, and in its reckless spirit at that time, and you remember they were war times, and that all of these waters along the south shore of the Mississippi Territory and the first touch of them, were considered the gulf of Mexico, and I think you will remember, in reading the history of this country prior to that time they have been called the south sea and the sea and the high sea and things like that. Now, then, the proposition is whether Congress had in mind Lake Borgne and the Mississippi sound as separate and distinct bodies of water from the gulf of Mexico?

A. I do not believe that Congress had any opinion on the subject because I do not believe they had any accurate knowledge on which to go. That is my personal opinion, from my experience with legislators.

Q. Then, in saying, in the act of Congress describing the boundaries of both States, to the gulf of Mexico, they probably meant to the first touch of those great waters Lake Borgne and the Mississippi sound they being then considered as a part of the Gulf?

A. I think Lake Borgne was named long prior to that time, I think you will find in the contemporaneous histories of the battle
1048 of New Orleans that Lake Borgne is spoken of, that the English went into Lake Borgne. I am not certain but I think in

a book written by an English officer, which I have, who was present on that campaign describing it in detail I think possibly that he mentions Lake Borgne as a place that the English went into in 1814.

Q. I do not mean to cut your answer short. I am quite sure that Lake Borgne had a name before that; but I have referred to the view that Congress took of it.

Q. If it had the name historically, prior to that time, it is possible that Congress was acquainted with that historical name. It appears to me that you must determine what Congress meant by organizing the Territory of Louisiana and the State of Louisiana, and fixing its limits, because after those limits were fixed, Congress could not by any subsequent act organizing the Mississippi Territory, take off any part of the Louisiana Territory or the State of Louisiana, not without the consent of the legislature of the State of Louisiana. Now, you must first determine what the original Territory of Louisiana was in accordance with——

Q. You mean in the contemplation——

A. Of the act of Congress which organized Louisiana, and then you must take the act of Congress organizing the State of Mississippi and wherever the act of Congress organizing the State of Mississippi comes into conflict with the act of Congress organizing the State of Louisiana, you must give precedence to the act of Congress creating the State of Louisiana because it was a prior act and Congress could not change it after it had organized the State and fixed the boundaries.

Q. I am quite sure, Judge Farrar, that you have knowledge of the common law theory, as to the high tide mark being the usual boundary of a State in measuring her common law three mile limit, you know, and I want to ask you if you have any personal knowledge as to where the high tide mark on the main land of Louisiana, is, immediately due south of the mouth of Pearl river through that marsh country?

A. The whole of southern Louisiana, the whole of the environments of the city of New Orleans are at or about mean tide level except certain ridges of land which run through them. All this portion between the Matarie ridge and Broad street is below mean tide level. All of that portion beyond the Metarie ridge and from there to the lake is below mean tide level, and at ordinary high tide on the Louisiana coast, a large portion of her main land goes under water. So, if you were to apply the common law rule to the Territory of Louisiana it would practically take millions of acres of land and put them into the high sea, which are subject to private ownership to day, which are cultivated and protected by levees and drains and are sugar plantations and rice plantations.

Q. I want to ask you——

A. That rule cannot be applied to a flat country like Louisiana which has to be protected from overflow, any more than it would

apply to the flat country of Holland which has to be protected from overflow.

Q. That is true enough, but, nevertheless, going down Nine Mile bayou southward into the Gulf proper, there is some point between that bayou and Lake Borgne and the Mississippi river where the flow of the tide is arrested and it ebbs. I want to ask you if you have any personal knowledge about that point where the flow of the tide around that bayou and towards the Mississippi river, marks its high tide?

A. I doubt whether there is any such point anywhere in that locality, for the reason that that locality is perfectly flat. There may be here and there individual ridges along the banks of small streams and bayous that were formerly connected with the Mississippi river which are above ordinary high tide; but all of that territory, as a rule, goes under water at high tide, and would go under every high tide except these small ridges, unless protected by levees or embankments of some sort.

Q. Do you know of any levee or embankment down the western bank of Nine Mile bayou that reaches around towards Bayou Terre Bœuf?

A. No sir. I doubt whether there are any levees there except possibly some small private levees that may have been put around properly that has been re-claimed.

Q. I do not understand you to mean by that, do I, that every high tide that comes in there, flows across this marsh into Lake Borgne by Proctorville?

A. No sir; because the high tide rises in Lake Borgne just as it rises on the outside. The tide comes up slowly and it rises on one side as well as on the other side, it rises on both sides.

Q. Now, Judge Farrar, I want to call your attention to another contention that Mississippi has in this matter. On this map, No. 7, introduced by Louisiana in this case, you will notice three distinct markings in blue lines. They are double markings, one being nautical miles and the other statute miles. The first one to the southwest undertakes, as we understand it, to mark the three leagues from the main land of Louisiana at the northeast and crosses west of Grand pass, as you see from the map?

A. Yes sir.

Q. The second double markings, measures from Grand pass and is supposed to be three leagues from that point. The third one, as we understand it, is three leagues from the northeast point of Isle à Pitre and reaches out to the artificial channel between Gulfport and Ship island. And you will notice that this last marking, that I have mentioned, near the Ship Island channel, strikes the Mississippi shore a little west of Gulfport; the second or middle marking would strike the main shore of Mississippi at Point Clear; while the first one or the one that is supposed to be measured from the main land of Louisiana, strikes the coast east of Point Clear. In other words, either one of those measurements would practically cut off the sov-

sovereignty and jurisdiction of Mississippi, in Mississippi sound and Lake Borgne west of Gulfport. Do you think that if Louisiana should claim jurisdiction and sovereignty to either of these three distant points, that it would interfere with the navigation and commerce, the jurisdiction and sovereignty, and general prosperity of the State of Mississippi, taking it for granted that Louisiana would pass laws with reference to paying license for the taking of fish, oysters and shrimp by the boats out of Pearl river way to the west of these lines, and other matters which you are more competent to consider than I can suggest. Look at those lines, please sir, and tell me what effect upon the commerce, navigation and the prosperity of the State of Mississippi it would have if Louisiana should have jurisdiction up to Gulfport?

A. So far as the commerce is concerned I do not see how an imaginary line of jurisdiction over waters of that sort, could have any effect,—

Q. May not the State establish a quarantine law separate from another State, and oyster laws; don't you think that would seriously affect it?

A.—for the simple reason that the admiralty courts of the United States take jurisdiction over all torts that happen upon navigable waters of the United States, and all vessels of every kind that are engaged in commerce are licensed and naturally under the laws of the United States and not under the laws of either State. And because under the Constitution of the United States there is absolutely free trade between the ports and commerce of one State and the ports and commerce of another State. So far as the advantage which results to the sovereign, from the conceded principle in this country that the sovereign owns the soil under navigable waters within the three mile jurisdiction and has the right to legislate about fishing in her own waters, whether of oysters or of other kinds of fish, why, if the State of Louisiana should undertake to legislate, having this jurisdiction over all the waters in her jurisdiction it would necessarily exclude the citizens of the State of Mississippi and the State of Mississippi, from those rights of fishing either of oysters or fish of other kind which the State of Louisiana might choose to exclude them from. That would be the effect of giving jurisdiction to the State of Louisiana over that territory. It would give the State control of the right to fish and of the right to deal with the soil lying under the water. So far as the quarantine is concerned, I do not understand that the laws of the State can prevent a vessel from sailing along the high seas; they simply can prevent them from having contact with another vessel from shore or with the shore; but I have never yet understood, and I know of no quarantine law, and I doubt whether a State could pass a quarantine law, which would prohibit a vessel from sailing through her waters, going either between ports in her own State or going between ports in her State and ports in another State.

Q. What about landing within the ports of Mississippi—

A. If this territory would include any part of the main land of Mississippi I should say that that would be an interpretation of the act that was never in contemplation of the Congress, that any grant of this jurisdiction within the three mile limit should touch or take in any part of the main land of that State.

Q. But tell us about this view of it Judge. If a cargo of lumber or other commerce, should undertake to go up Pearl river, according to the claim of Louisiana, supposing that her local jurisdiction extended out to Gulfport, she could force that cargo of lumber to go somewhere else, even though under the local laws of the State it would not be permitted by some quarantine regulations to go?

A. No sir; I do not think so. The Mississippi river is the boundary line between the State of Louisiana and the State of Mississippi, and I have never understood that either the State of Louisiana or the State of Mississippi ever undertook to regulate the navigation of vessels up and down the Mississippi river on account of quarantine.

Q. I mean Pearl river?

1051 A. Pearl river being the boundary line would be governed by the same rule. The State of Louisiana has no control whatever, expressed or implied, direct or indirectly, over commerce that floats on her waters even those within her State and especially upon a river which is a boundary line between two States. She cannot pass any law which regulates commerce, directly or indirectly. She cannot license vessels. She cannot enroll them. She cannot prohibit licensed and enrolled vessels of the United States from entering her ports except in accordance with her quarantine laws.

Q. Do you understand that rule to apply to interstate commerce lumber that might come along the Mississippi coast desiring to go up to the mills on Pearl river?

A. My view of the quarantine powers, under the Constitution of the United States, is, that those quarantine powers are entirely under the control of the State. The Federal Government has nothing to do with them. That each State has the right to protect her own citizens by proper inspection laws and quarantine laws, from importation of diseases; but under the pretense of protecting her own citizens she has no right in the guise of a quarantine law to pass a regulation which would be a regulation of commerce.

Q. However that may be, if the State has sovereignty and jurisdiction, under the common law, three miles from her shore, and if it be true that the act of Congress admitting the State into the Federal Union should extend her common law sovereignty and jurisdiction from three miles to 18 miles, that State could inaugurate laws that would seriously interfere with an adjacent State who had different laws from her own?

A. If the Congress of the United States could extend the territory of Mississippi 18 miles from her shore, the State of Mississippi would have the constitutional authority to legislate for everything within that territory that a State has the power to legislate with reference

to it, under the Constitution of the United States, and if those laws were within the Constitution and objectionable to the citizens of another State, why, the citizens of the other State would have to stand the objectionable law.

Redirect examination.

By Mr. DYMOND :

Q. Let us suppose there was a point on the southern coast of Mississippi where there were no islands, and the opening was more than six miles broad between the ends of the islands if there were islands east and west of them, I do not understand you to say, do I, that Mississippi would have jurisdiction 18 miles out into the sea where there were no islands, under the act of Congress creating Mississippi?

A. The general law of nations, as I understand it, is, that the high sea belongs to the earth, to the world, and that the jurisdiction of every country extends three marine miles from shore. I doubt whether Congress would have the power to extend the jurisdiction of the State of Mississippi beyond the three marine miles. I do not believe that any other nation in the world would recognize such authority, because if they could extend it 18 miles they could extend it 40 miles, and one nation could extend its own limits 1052 as far as it pleased. So, that, I should say that the State of Mississippi has no jurisdiction, under the law of nations, beyond three miles from the main shore.

By Mr. McCLURG :

Q. Just to interject. But, there is one State to the east of us somewhere that has 20 leagues.

A. I do not believe that any nation in the world outside of the United States would recognize any such grant of authority.

Q. Do you think that that would be binding, Mr. Farrar, between the States of the Union, independently of any controversy with any foreign country, if the United States through its law making power should grant that ; would it not be binding as between the States of the United States, whether it would be, or not, as to foreign countries?

A. I do not think that if Congress of the United States had any such power that it would be binding as between the States.

By Mr. DYMOND :

Q. Do you know the rule of international law, where a boundary between two States is a river and that river empties into an estuary, bay, or strait, or sound, what the rule of international law is, in the sound, bay or strait, as to the boundary?

A. That it follows the main thread of the main channel if there is one through the estuary or through the sound. That is the rule, as I understand it, of international law.

Q. Was it on that theory, that Pearl river was the boundary between Louisiana and Mississippi, that you reached the conclusion, for yourself, that through Mississippi sound this estuary of the sea, the deep water channel should be the proper boundary?

A. I have never considered the question to any extent, or made up my mind what, under the law, the true boundary between Mississippi and Louisiana was. I never was called on to study it, therefore I have not expressed any opinion that I know of as to what that line definitely is, under the law. I stated to the ex-attorney general of Mississippi that it appears to me that the first thing to determine was what Congress meant by the original organization of the Louisiana Territory, what did the United States get from France under its treaty with France, what was the boundary line between the then territory of the United States and the required territory of the United States, and determine from that what the territory of Louisiana was according to that description, because it appears to me that it was the evident intention of the act of Congress to take that territory which it had acquired from France and to organize it into a government and it was possible and probable not the intention of Congress to give to this territory of Louisiana any other or different boundaries from what it had when it got it from France, and that after you had determined what the territory of Louisiana was as obtained from France, then look at the act of Congress organizing the Territory of Mississippi and if there is any conflict between the two, why, the Louisiana boundary must govern being the oldest in time and because it was beyond the power of Congress after it had organized the State of Louisiana to take any territory away from it without its consent.

1053 Q. Are you familiar with the topography, so as to testify, of what we call the Rigolets joining Lake Pontchartrain and Lake Borgne and Mississippi sound?

A. I have been through that very often and I know it is a very wide and a very deep channel through which a very strong current runs first one way and then the other according as the tide changes.

Q. Has it the general features of a river reaching into the sea?

A. I should not call it a river at all. It is more of an estuary connecting these two expanses of water known as Lake Pontchartrain on one side and Mississippi sound on the other.

Q. From your knowledge of the general topography of the country if you were told that dating back since 1683, in the treaties which have been made between the various continental governments concerning this territory, that the boundary line was described as thence through the centers of Lakes Maurepas and Pontchartrain to the sea or to the gulf of Mexico, from your knowledge of the country, how would that boundary reach the sea or gulf of Mexico as interpreted by international law?

A. It could only be reached by treating the Rigolets or by treating another similar channel and smaller in nature known as the

Chef Menteur which runs from this lower point here to Lake Borgne as an estuary and as part of Lake Pontchartrain.

Q. How then would it reach the sea or the gulf of Mexico?

A. Only by treating all of the water from there to the gulf of Mexico as an estuary.

Q. Would you follow the deep water channel in reaching the sea through that estuary?

A. Assuming that it was an estuary, yes.

By Mr. ZACHARIE :

Q. Counsel for Mississippi read to you an extract from the act admitting Louisiana, that is, the original act of April 6th 1812, and he read particularly to you this clause, "Thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the coast." Now, on the 14th of April 1812, eight days thereafter, Congress passed an act which was accepted by the State of Louisiana, and added to their constitution, some additional territory which reads as follows: "Beginning at the junction of the River Iberville with the Mississippi river; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the eastern branch of the Pearl river to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana." You therefore see that the eastern mouth of Pearl river is mentioned as the southeastern boundary line of Louisiana. Now, construing these two acts together, is it not true then, that the boundary should extend to the eastward from the mouth of Pearl river to the gulf of Mexico or to any arm of the gulf of Mexico. Counsel for Mississippi did not read the second act, the act of April 14th.

1054 A. Necessarily the two acts must be construed together according to a well known principle of law, and necessarily they must be read, if possible, so as not to produce conflict, if they can be so read, and necessarily as the second act purported to add to the territory of Louisiana it must be read in the light of an addition to that territory. The second act of Congress does not appear to make any additions or to make any changes relative to the boundary of the State of Louisiana from the mouth of the Pearl river eastward, different from that made in the original act, so that you must go to the original act to determine what Congress meant by the boundary of the State of Louisiana from that point, or from Lake Borgne around to the eastward.

By Mr. McCLURG :

Q. Let me ask you now, right in that immediate connection. According to the original act, where did the line strike Lake Borgne out of Lake Pontchartrain?

A. I should say that depends; if you consider the wide deep channel called the Rigolets, as part of Lake Pontchartrain, why, then, Lake Pontchartrain and Lake Borgne touch each other.

Q. What about Chef Menteur?

A. Chef Menteur is a small stream, an insignificant stream of the same character as Lake Borgne, but way down here at the lower end of the lake.

Q. It is so shown on that map and I understood you to say that you had some personal observation—

A. I have been through Chef Menteur and I have been through the Rigolets.

Q. Well, which is the wider of the two, Judge?

A. Oh, the Rigolets is very much wider than Chef Menteur and deeper.

Q. Did you notice a fort on Chef Menteur?

A. Yes, sir. After the battle of New Orleans the United States Government finding the manner in which the English had approached New Orleans through the rear they fortified the Rigolets, put a fort there, and they fortified the Chef Menteur, so as to close the entrances into Lake Pontchartrain and they fortified these various bayous leading from Lake Borgne up towards the city of New Orleans. You will find at the mouth of the Bayou Dupre through which the Lake Borgne canal now runs, a fort; you will find another fort on Bayou Bienvenu and another fort down near the shell beach at a small bayou that comes in there. All of those inlets to the city of New Orleans were fortified by the United States after the war of 1812. They have now all been abandoned by the Government.

By Mr. ZACHARIE:

Q. Will you consider again and see if you have not made a mistake and whether that addition does not shift the eastern boundary of Louisiana to the mouth of East Pearl river?

A. I have stated that it does shift it to the mouth of East Pearl river, but I have stated that inasmuch as the mouth of Pearl river and the mouth of the Rigolets are not very far apart and that they both run into Lake Borgne, that this act of Congress does not
1055 undertake to change or to modify the boundary of the State of Louisiana east of that point or of a line joining those two points.

Q. I will read to you the description of the boundaries of the State of Mississippi as laid down in the act admitting the State to the Union "Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same thence along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the gulf of Mexico." Now is the clause to which I want to attract your particular attention, "thence westwardly, including

all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne." Do you interpret that boundary as including all waters within 18 miles of the southern coast of Mississippi, or, is not her southern boundary limited to the three mile limit except where there are islands and the boundary gives her the islands. Does that mean to say that, starting from a point near Pascagoula and going westward, it takes in all the waters within 18 miles, or does it only include the islands within 18 miles?

A. You want my opinion as a lawyer?

Q. Yes?

A. I should say that this was a grant of jurisdiction over the islands within six leagues of the shore, and that it was not a grant of absolute jurisdiction to the State of Mississippi over the waters and the soil under the waters within six leagues of the shore because there is absolutely nothing said in the act with reference to the three mile limit or to any other limit or with reference to the jurisdiction of the State over the waters or with reference to the jurisdiction of the State over the soil under the waters. That was apparently left to the general rule of international law, that the jurisdiction of the State extended for three marine miles. The grant is made, however, to the islands that are within six leagues because those islands were part of the territory of the United States and it was not evidently the policy of Congress to have islands belonging to the United States lying off the shores of a State that were not within the control or jurisdiction of some State.

OBJECTION.—Mr. McCLURG: The question and answer is objected to as plainly calling for a mere opinion.

By Mr. McCLURG:

Q. There can be no doubt in your mind, Judge, of the power of Congress to change the common law rule, within her jurisdiction, by special act, can there?

A. Congress has the power to legislate within the grants made to the Congress by the Constitution and for the purpose of carrying those grants into effect. She has no other powers than those. The Government of the United States is a government of delegated powers. If a subject is within the powers of the United States
1056 it can make any rule with reference thereto, it chooses, whether that rule is in conformity with or in contravention of the common law rule or not. It can change the common law as it pleases in so far as granted powers are concerned.

Q. That is the extent of my inquiry. I understand from what you said a few moments ago that you doubted very much whether the Congress of the United States had jurisdiction to legislate beyond the three mile limit?

A. My opinion as a lawyer, is, that the Congress is absolutely without power to legislate any matter beyond the conceded limits of the United States according to the law of nations, except to de-

fine offenses upon the high seas committed upon vessels of the United States. In other words, Congress cannot assume to herself powers that no other nation possesses, and it is conceded by the law of nations that no nation has a right to legislate except within her own territorial limits and that her own territorial limits extend to within three marine miles of the shore, and the islands, of course, that are adjacent thereto and over which the country has jurisdiction.

Q. May not Congress make a grant within those three miles of the shore in the language that it has made in admitting the State of Mississippi into the Union granting her six leagues from shore. That means six leagues from the shore intending to give the State sovereignty and jurisdiction subject to the common right of nations over the face of the waters and the soil under the waters, and when it says to include all islands, not to limit the grant that it has made but to make certain facts of the grant of jurisdiction to the water and the territory under the water and whatever islands may protrude above the water. Would that not be a reasonable construction of these acts?

A. I should say no. I would not interpret an act of Congress as extending the jurisdiction and power of a State beyond the limits conceded by the law of nations, to be the limits of any nation's territory unless the act of Congress said so in terms so specific and so clear that no other interpretation could be put upon it, and if the act of Congress did undertake to extend its own territory, or the territory of any State which it might create out of its own territory beyond the conceded limits established by the law of nations, I should say that that act, in so far as such extension was concerned was absolutely null and void and was not binding either upon any foreign State or binding upon any other State in the Union.

Q. Not going beyond the three mile limit; taking for an illustration the act admitting Louisiana into the Union and giving her three leagues from her coast to include all islands within that reach, do not the words to include all islands mean the accumulation rather than the limitation of the jurisdiction of the State over the islands?

A. I do not understand your question.

Q. Where an act of Congress creating a State says that the line is to run from one sea point to another, and to include all islands within three leagues of the shore, are the words "to include all islands" words of limitation or does it not mean to make the act certain that she shall not only have jurisdiction over the water that distance but also over the islands.

A. I cannot so interpret the act. You might have an act of that sort apply to a coast line 500 miles long; there might within that distance be one or two or three islands situated a short distance 1057 from the coast. To interpret such an act in that way would be to mean that Congress undertook to violate the law of nations and stretch a State out through hundreds of miles of country into the ocean, very much further than the law of nations conceded her jurisdiction to extend. As I understand it, the three marine

miles applies not only to an island but it applies to the main land ; in other words, the territory of the State extends, under the international law, not only three miles from the main land but it extends three miles from an island because an island is just as much a part of the territory as the main land and that limit extends all around every island. If the limits lap each other, why, then all included waters are within the jurisdiction of the State. If the three mile limit around the islands do not lap, then there is a wide space of territory between which is high sea and not under the jurisdiction of the State.

Q. Then, it is your opinion that where Congress, as it has done in the formation of these States, the Atlantic and Pacific and Gulf States, has undertaken to grant jurisdiction, subject always of course to international right, farther out than three marine miles, she has exceeded her constitutional powers?

A. Yes sir. If the Government of the United States has undertaken, with reference to any State, to extend the jurisdiction and power of that State for more than three marine miles beyond the shore line, either of the main land or of some island, then Congress has exceeded her powers and no sovereign in the world is bound by such excess of powers with reference to the territory in question.

Q. You know that Congress has done that in the formation of nearly all her sea bound States?

A. She may have done it, but in my judgment she had no power to do it.

OFFER.—MR. DYMOND: Counsel for the State of Louisiana offer, introduce and file in evidence, a certified copy of act No. 26, being senate concurrent resolution adopted by the General Assembly of the State of Louisiana, approved by the governor of the State of Louisiana June 17th 1904, ratifying, approving and confirming the action of W. W. Heard governor of Louisiana in instituting this suit, which said exhibit is to be known as Document No. 99, a certified copy thereof being delivered to counsel for the State of Mississippi.

Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned by the commissioner until Thursday September 15th 1904.

Resumption of Proceedings.

1058

NEW ORLEANS, THURSDAY, Sept. 15, 1904.

Pursuant to adjournment the hearing was this day resumed at the same time and place.

Present: Hon. W. W. Bullard, commissioner.

Hon. Walter Guion, att'y general of the State of Louisiana.

Mess. John Dymond, Jr., and F. C. Zacharie, associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

CASIMIR HARVEY, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. What is your name?

A. Casimir Harvey.

Q. What is your age?

A. I am 59 years old to day.

Q. Where do you live?

A. At Back Bay, Biloxi, Mississippi.

Q. How long have you been living there?

A. I was born there, that is 59 years ago.

Q. And you have always lived there ever since you were born?

A. Yes sir, except a little while I lived at another place.

Q. Did you ever, at any time, write to the land office in Mississippi, a letter with a view of acquiring from the State of Mississippi land down in what is called the Louisiana marsh?

A. Yes, sir.

Q. About what time was that, how many years ago?

A. Let me see, it was about 1887.

Q. Did you forward the letter?

A. No, sir.

Q. Did you mail it, was it mailed?

A. It must have been mailed because it came back to me, you know. Mr. Seal wrote it for me and he sent it to the land office at Jackson and the clerk or whoever he was he wrote back on it there was no such thing on record there and when Mr. Seal got the letter he sent it to me and I opened the letter and I read it my self and threw it to one side.

Q. What do you mean by, there was no such thing on record?

A. There was no such piece of land as Creole gap there.

Q. Where was this land that you wanted to purchase?

A. What I wanted to get ?

Q. Yes ?

A. It was around Creole gap.

Q. Land in the neighborhood of Creole gap ?

A. Yes, well, the whole of Creole gap I wanted to buy, about half a mile or a mile square there.

Q. Do you mean by that the water or what ?

A. I wanted to buy the water and the land, it is all included.

Q. And you got the letter sent back to you ?

A. Yes, sir.

Q. That Mr. Seal had written for you ?

1059 A. Yes sir, because he knowed the gentleman there.

Q. Now, Mr. Harvev, I understand that the letter that was written by Mr. Seal for you, came back to him ?

A. Yes sir.

Q. And he, Mr. Seal, sent it to you ?

A. Yes sir.

Q. And was there any letter from the land office in Mississippi with it ?

A. No sir. The same letter that went, that was wrote to him.

Q. What came back on the letter ?

A. To let me know there was no such thing on record, of the land, of that Creole gap ?

Q. Where was that from ?

A. That was from the land office.

Q. In Mississippi ?

A. Yes sir, Jackson.

Q. Then do I understand that on the letter or the blank part of the letter that Mr. Seal wrote, there was endorsed the statement there was no such land to be got from the State of Mississippi ?

A. Yes sir.

Mr. McCLURG : I think it would be better to let him account for the letter.

Q. Where is that letter ?

A. That is what I would like to know myself, where it is.

Q. Did you ever give it up to anybody ?

A. No sir ; I threw it away ; when I went to look for it, it was not in the big box where I threw my letters in, I looked for it the other day and I could not find it.

Q. When did you look for it ?

A. Yesterday. I threw about 100 letters or more out of that box, I went through it piece by piece and I could not find it. I had one that the roaches got in and ate every bit of it nearly, all of the letters the roaches had been eating.

Q. You found that the letters you had in that box — eaten by roaches ?

A. There was one eaten up, plum-gone, they had been living on the letters in there.

Q. Was this letter in that box?

A. Yes sir, and a good many were all torn up and wet in there was a leak in the roof of that old store, everything was and soaked and stained.

Q. Then after you searched through all your papers, you failed find that letter?

A. Yes sir, I tried to find it.

Q. And you were satisfied that you never gave it up to anybody?

A. Yes sir. Nobody had any business with it. It was no good to me or anybody else when I found out I couldn't do anything there.

Q. Will you look at this map that is marked Exhibit A which was introduced in evidence by the State of Mississippi during the examination of Mr. W. K. M. Dukate and while being cross examined, and state whether or not you can point out to us the place where you wanted to enter this land. This is Creole gap here?

A. This is the place I wanted to get, right there, Creole gap 1060

Q. Did you want to get any land in that neighborhood?

A. I wanted to get the land and water so I could use the grounds for oysters as well as get the land.

Q. What land did you want to get?

A. That piece there.

Q. This piece here?

A. Yes sir.

Q. You mean between Grand pass and Creole gap?

A. I mean at the edge where Mr. Leovy was, he came close Creole gap, and I wanted from his line to the west, I wanted half a mile or a mile there and I couldn't get it.

Q. Of land?

A. Yes sir, and we did get it afterwards anyhow.

Q. In examining Creole gap on this map before you, do you find that the Creole gap you referred to is the same Creole gap that divides Isle à Pitre?

A. Yes sir.

Q. Then the piece of property you wanted to get was between the land that Mr. Leovy owned to the west of Creole gap and all east of his property as far as Creole gap?

A. Yes sir, that is what I wanted, from his property going to the westward.

Q. When you couldn't get that property from the State of Mississippi, what did you do?

A. I came to New Orleans, when I found out that Mr. Leovy owned this here.

Q. Owned what?

A. The point here.

Q. Point of what?

A. Of Isle à Pitre. I came here to see him for him to tell me how he got it and he told me he got it through the land office at Baton Rouge in Louisiana; then I went and saw Mr. Gilmore and we

them blanks or application- and filled them out and he got that piece there first, that was the first piece we got.

Q. Where was the first piece you got, near Creole gap?

A. We got Creole gap, we got what he owns now, Creole gap on the map.

Q. Mr. J. C. Gilmore?

A. Yes sir.

Q. Do you own any part of this Isle à Pitre?

A. No sir, he bought that, that was for us.

Q. Who do you mean by us?

A. Me and Mulholland and J. C. Gilmore, he was the head man about it, he did the buying and we furnished the money with him and so he bought that there and bought a whole lot more for himself.

Q. Where else did he buy?

A. All along in there, I don't know, he bought this place near this big bay here.

Q. Do you mean near Jack Williams bay?

A. Yes sir, and we made a swap for that piece here for our interest in there.

Q. Interest in what?

A. In this.

Q. For the interest in this piece down near Jack Williams bay?

A. Yes sir.

Q. Where do you own now, you and Mr. Mulholland?

A. This here.

1061 Q. When you speak of this here pointing at the map as you do what place do you mean. You have to tell us what it is because the Supreme Court does not see you pointing here with your finger.

(Witness being asked to point on the map before him the place which he now owns with Mr. Mulholland states that the property that he now owns is shown on a sketch which shows that the property is in township 11, south range 20, east, being the southeast quarter of section 29, the west half of the southwest quarter of section 28, the east half of section 32 and the west half of the northwest quarter of section 33 and the north half of the northeast quarter of section 5 township 12, south range 20 east.)

Q. You say that the property that you then got from Mr. Gilmore is shown on this map before you as being near Jack Williams bay?

A. Yes sir, the Southeast bay they call it, that is, of course I can't say nothing more than what it looks like on that map, it looks like it by the map here.

Q. Did you apply to the State of Mississippi to get this property?

A. No sir.

Q. The property that you applied for to the State of Mississippi was near Creole gap?

A. Yes sir.

Q. Is that correct?

A. Yes sir. If I am not mistaken that is what I applied for. I know I applied for that there, I don't know if I mentioned Creole gap, or not, because it is so long ago I couldn't exactly say that I mentioned Creole gap but I wanted to see if I could enter the piece of land——

Q. Did you describe it at all in your application or in the letter that was written for your account?

A. I don't know if I stated Creole gap or not, at least, I told the man to write up there to see if I could enter a piece of land over there.

Q. Over there?

A. Over at Isle à Pitre, you know, and they wrote back to him there was no such record there, but I believe, I am not sure, I said I wanted to enter Creole gap, I believe I told Mr. Seal to tell him so, to write that to him.

Q. Did you read the letter that came back from the land office that had been written by Mr. Seal?

A. Yes sir.

Q. When it came back did you read it?

A. Yes sir and it said——

Q. No, I am speaking of the letter that was written for you by Mr. Seal, did you read that?

A. No, the letter came back to Mr. Seal and he sent it to me.

Q. When you got it did you read it?

A. Yes sir.

Q. Did you see what Mr. Seal had written?

A. It said there was——

Q. No, what Mr. Seal wrote.

1062 A. I don't remember what he put in it.

Q. Do you remember whether he wrote to the land office in Mississippi?

A. He said he did.

Q. Well, the letter that you had, that he sent you, was that the letter from Mr. Seal?

A. The same letter that he sent was sent back to him.

Q. I understand you. You have gotten confused. Mr. Seal, as I understand, wrote a letter for you?

A. Yes sir.

Q. Is that correct?

A. Yes sir.

Q. To whom was that letter written?

A. To the clerk there at the office at Jackson.

Q. What office?

A. To the clerk's office, I suppose, there.

Q. Do you remember whom it was written to?

A. No sir, I don't know the man's name; he said it was a friend of his.

At the land office ?
Yes sir, at the land office.
Well, now, that letter that Mr. Seal wrote, it came afterwards your possession ?
It came to him first and he sent it to me.
It came back to you from him ?
From Mr. Seal.
When Mr. Seal sent it to you what was on it besides—
I don't remember exactly. That is all I noticed, it said there nothing on record there.
Who had written that upon it ?
I don't know ; it must have been the land office I suppose, I t know.
You don't know whose writing it was ?
No sir.
Do you know the name that was written on it, the signature ?
No sir ; I couldn't tell you that. That is too long ago for me to remember.
Q. Do you remember how he described himself, the man who wrote this on the letter to Mr. Seal, what he claimed to
I don't know what he was there, I couldn't tell you.
Whom did you understand the letter was from ?
From the land office up there.
You understood that at the time ?
I told Mr. Seal to write up there and he said he had a friend would find out so when the letter came that is all I saw about here was nothing there on record.
Did you read that letter that Mr. Seal wrote to see what he d in his letter. When your letter came back did you read it ?
I believe I did.
Well, what did Mr. Seal ask for in his letter ?
I believe he asked if there was any land there of that descrip- for sale over there and he said no there was nothing there to at the land office.
You understood, did you, at the time, who it was from ?
I understood there was no such land there to sell, to be got, on rd.
Did you understand who was writing that letter ?
No, I couldn't tell who was writing that letter, I couldn't tell nan's name.
All that you understand is, it was from the land office in Mis- sippi ?
Yes sir.
And that letter you have not been able to find ?
No sir, and I could not say exactly all what was on there either use it is impossible to say that in that long time, for a person to mber.

Q. How did you happen to look for this letter; were you asked to do it. Here lately have you been asked to look for this letter?

A. Yes sir; this gentleman asked me if I had the letter.

Q. Which gentleman, Mr. Zacharie?

A. Yes sir.

Q. Did he see you in Biloxi?

A. Yes sir; he asked me if I had the letter and I told him I thought it was mighty strange how he knew I had got a letter, it didn't matter much but he asked me if I had got a letter from the land office up there and I told him yes, I had gotten one but I didn't have it now.

Q. How long ago was it he asked you?

A. Three or four days ago.

Q. Were you asked by him to look for this letter?

A. Yes sir.

Q. You did so because he asked you?

A. No, but I thought I would look for it myself.

Q. Were you notified you were expected to be a witness here?

A. Yes sir, he told me.

Q. Colonel Zacharie you mean by he?

A. Yes sir, that gentleman over there.

Q. You were told you were expected to be a witness in this case, is that right?

A. He didn't say I was going to be a witness in this case; he didn't tell me I was going to be a witness.

1064 Q. Did he tell you what he wanted to prove by that letter?

A. I don't hardly know what he told me.

Q. What reason did you have for looking for the letter. Why did you look for it?

A. To see if I could find it.

Q. What did you want to find it for; what did you want to do with it after you found it?

A. I remember now, he told me if I could find that letter may be it would save my property that I got in the marsh, this here, the piece of land I own out there.

Q. Did you make a diligent search for the letter?

A. I did look for it.

Q. Did you look for it carefully?

A. Yes sir; I examined all the papers where I thought the letter was. I examined everything around there, but it is too long ago to be hunting a letter that way, you know.

Q. And when you looked for it you had been told by Colonel Zacharie that you were expected to be a witness in this case?

A. I don't know if he told me or if you wrote to me or not.

By Mr. ZACHARIE:

Q. I told you so and wrote to you also.

A. I don't know whether you told me; I know you wrote to me I would be summoned.

Q. Mr. Harvey, do you remember if you asked me the question how the decision of this suit would affect your title to the land in the Louisiana marshes?

A. Yes sir, I believe I asked you that in case Mississippi takes that boundary, you know.

Q. Didn't I answer you that of course if this land was granted—was decided in this suit as belonging to Mississippi that your Louisiana patent would not do you any good?

A. Yes sir.

Q. Isn't that the substance of our conversation?

A. Yes sir.

Q. Didn't you bring that out yourself by asking me what effect it would have on your title?

A. Yes sir; if a man would lose his property that he bought from Louisiana; that is what I meant; they said the line was going to run through, right straight across.

Q. Did I or did I not make any voluntary statement to you to induce you to testify; didn't this come from you asking me the question as to what effect the decision of this suit would have on your Louisiana patent?

A. You told me it would be good if Mississippi didn't win it.

Q. That was at your request, a reply to your question was it not?

A. Yes sir.

By Judge GUION:

Q. Why was it that when you wanted to get this piece of property in Isle à Pitre that you called Creole gap, that you got Mr. Seal to write to the State of Mississippi, to the land office there?

A. I asked him if he knew anybody up there, I believe, if I am not mistaken, and he told me yes he knew somebody up there and

I told him to write to see if there was any land to buy about 1065 there at Isle à Pitre or Creole gap I forget exactly, if I could buy any land over there, and that is the way it came, he wrote back there was no such record of that land over there.

Q. I understand, but that is not my question. Why did you make application to the State of Mississippi for this land instead of Louisiana?

A. I didn't know any better, I didn't know who was claiming it, I don't know who is claiming it now even.

Q. Had you ever heard of this territory down there called the Louisiana marsh?

A. Yes sir, I always did hear it called the Louisiana marsh.

Q. You always heard it called by the name of the Louisiana marsh?

A. Yes sir, I always heard it called the Louisiana marsh and nothing else.

Q. Did you hear it called by the name of the Grand marsh?

A. I suppose I heard that name too many a time but I don't remember of hearing people calling it the Grand marsh.

Q. You had always heard it called the Louisiana marsh?

A. Yes sir, but I heard some people call it Grand marsh.

Q. Where was this Louisiana marsh, where did it begin as you understood it?

A. I always thought south of Cat island was all Louisiana marsh.

Q. That is the way you understood it?

A. It seems to me.

Q. And to the west of Cat island, how did you understand that?

A. I understood that was towards Mississippi, I always heard so.

Q. To the west, not to the east?

A. I always heard that the channel divided the lines.

Q. You always heard that what channel divided the lines?

A. Cat Island channel.

Q. You always heard that channel——

A. Divided the lines.

Q. What channel do you speak of?

A. Cat Island channel.

Q. Where is that, between Cat island and what?

A. Between Cat island and Isle à Pitre.

Q. You always heard that spoken of as the line between what?

A. Between Louisiana and Mississippi.

Q. Going to what place?

A. Going out and coming in.

Q. Going as far west as what?

A. As Pearl river.

Q. Having understood that the channel between Cat island and Isle à Pitre was the dividing line between Louisiana and Mississippi, why did you apply to Mississippi for this piece of property?

A. Because I didn't know any better at the time.

By Mr. ZACHARIE:

Q. Will you examine this map of Mississippi, Exhibit A. What is this territory called, from Isle à Pitre running to the westward as far as Malheureux point? All this territory shown there running to the west. What has that been called. Here is the Mississippi shore up here. Now, this is south down here, what is that called?

A. I can't tell you except the Louisiana marsh.

1066 Q. That is exactly what I want to get at.

A. Louisiana marsh, but when I applied for this I didn't know any better.

By Judge GUION:

Q. Did I understand you to say just now that you had heard people say it was in Mississippi, Isle à Pitre?

A. Some of them, they say until now it belongs to Mississippi.

Q. You didn't know who it belonged to?

A. No sir, I didn't know anything about it. I know that Mr. Gilmore got it at the land office at Baton Rouge. I know he got that there, that didn't seem like it was in Mississippi.

Q. Why did you apply to Mr. Leovy when you came over to New Orleans what was your object in seeing him?

A. To find out how it could be got.

Q. To find out how you could get the land?

A. Yes sir. That was the only one I ever did find out from, because I didn't know how to go to work it out, and he showed me and told me all about it and I went to see Mr. Gilmore.

Q. Mr. Joseph Gilmore?

A. Yes sir, that was the only way because I didn't know.

Cross-examination.

By Mr. McCLURG:

Q. Was anybody interested with you, Mr. Harvey, in desiring to purchase Creole gap?

A. All three of us, me and my son in law and Mr. Gilmore.

Q. Mr. Joe Gilmore?

A. Yes sir.

Q. And did you all talk about applying to Mississippi for it before you did do it?

A. No sir; nobody knew anything about it but me; I was the one that happened to be at the courthouse one day and I asked Mr. Seal to write for me, that was the only way.

Q. That was Mr. Florian Seal?

A. Yes sir.

Q. What office did he hold then?

A. Sheriff, like he is holding sheriff's office now. I don't suppose that he knows about it any more.

Q. When was that?

A. That was in 1887. He don't know anything about it any more.

Q. How much did you pay the State of Louisiana for that land?

A. I paid a bit an acre. I didn't buy it from the State of Louisiana.

Q. Whom did you buy it from?

A. I got it from Mr. Gilmore.

Q. Creole gap?

A. He bought that, but we were together in that and then he bought some more land up in there and he bought this, bought what we were looking at, and we made a swap of our share and what stock we had in Creole gap we gave to him for this part.

Q. What did Creole gap cost him, a bit an an acre?

A. Yes sir, all of it, a bit an acre.

Q. How much of the Creole gap was water and how much land?

A. I believe there was 80 acres.

1067 Q. How much of it was land and how much water?

A. We bought all the overflowed land.

Q. Didn't you get as much water as land?

A. Overflowed land, overflowed marsh.

- Q. Did you get the pass, the water through the gap?
- A. Well, there was nothing much of a pass through there.
- Q. Does it go through the land you bought?
- A. Yes sir, the water goes through.
- Q. Through the land you bought?
- A. Yes sir.
- Q. You bought on both sides?
- A. Yes sir.
- Q. You wanted it for oyster purposes?
- A. Yes sir.
- Q. You never cultivated any of that land, did you?
- A. We put—how many barrels we put in there?
- Q. I mean this, you never planted any crops of any kind?
- A. We planted oysters in there.
- Q. I am talking about on the land; did you ever plant any cane, cotton, corn, vegetables?
- A. No sir; I never planted much of that.
- Q. On this land did you plant anything there but oysters?
- A. No sir; that is all we are working for now, oysters.
- Q. You say Mr. Seal told you he had a friend up at Jackson he would write to?
- A. At that time, yes sir, he had a friend that he wrote that to.
- Q. And he wrote to his friend?
- A. Yes sir.
- Q. Did he tell his friend to inquire at the land office?
- A. I believe that is what he wrote if I am not mistaken.
- Q. He wrote to his friend then at Jackson to go and inquire at the land office?
- A. I don't know, but I know it was at the land office anyhow, but I don't know who he was, I don't know anything about that.
- Q. Here is what I want to know, did he write to the land office direct or did he write to his friend up there to go to the land office?
- A. May be it was to his friend, I don't know, that is it, I don't know anything about that you see, he said he had a friend up there, I don't know whether he meant in the office or not, you see, I couldn't tell.
- Q. You had an idea, you and your son in law, at that time, that that land was in Mississippi, did you not?
- A. No, not after I found out it was not. How can a man tell on what line I have got a piece of land now, just the same thing, a man can't tell nothing, on which line, you see what Mississippi is claiming now. Well if she claims that Louisiana don't own Isle à Pitre you see you can't tell on which line it is now.
- Q. You thought it was in Mississippi?
- A. I thought it was in Mississippi when I got him to write; but when I found it was not in Mississippi then I came to New Orleans and saw Mr. Leovy, you see, and I saw his papers, he showed me all his papers and he wanted to sell it and I told him no, I wanted to buy a piece next to you and I saw on his map that he did not come quite to Creole gap and we bought from Creole gap—

Q. From Creole gap west?

1068 A. From the east side of Creole gap over west, 80 acres.

Q. You say you have heard that marsh territory down there called Grand marsh?

A. I heard it called Grand marsh and I heard it called Louisiana marsh.

Q. You heard it called the marsh too, have you not?

A. I always thought that the Grand marsh was on the west side of the Mississippi river.

Q. You stated a while ago that you always considered that the Cat Island channel was the line between the two States?

A. That is what they said.

Q. You did not think that when you applied to Mississippi for that land?

A. No, you see I had not studied about that; furthermore they say that the Louisiana line now runs and takes that Nigger point, takes a part of that, that is what I hear, I don't know anything about it.

Q. Are you interested in any land about Nigger point?

A. No sir.

Q. Your land is over there by Jack Williams bay?

A. Yes sir, Southeast bay I believe they call it.

Q. South of Grand pass?

A. Yes sir, about five miles.

Q. How far is it from Creole gap to Bay St. Louis?

A. You have got me now. Creole gap to Bay St. Louis, it ought to be fully 20 miles, in that neighborhood.

Q. Did you ever hear, Mr. Harvey, that Mississippi claimed 18 miles from her shore?

A. That is what I hear now.

Q. Did you ever hear it before this suit started?

A. No sir.

Q. You never heard that?

A. No sir; I never heard it.

Q. Did you ever hear anything of any armed conflict between the officers of Saint Bernard parish and the officers of Harrison county over the State line?

A. No sir, not that I know of.

Q. What is your occupation?

A. I am a ship builder by trade.

Q. Have you ever fished oysters any?

A. I fished oysters a little, I fish very little oysters.

Q. When were you last at Isle à Pitre, Creole gap, Grand pass and Jack Williams bay?

A. The last time I was about Creole gap I went through there, that is about ten years ago, after I took my schooner off the island, she was ashore and I went there for her and I went through Creole gap.

Q. Did you ever go through Grand pass?

A. Yes sir.

Q. How long ago?

A. A good many years ago, about 15 years ago.

Q. Were you ever at Nine Mile bayou?

A. No sir.

Q. Were you ever at Three Mile bayou?

A. No sir, I never was there at all and I have been running here for 40 years, to New Orleans, and I never went to those places after you come out of the Rigolets to the southward, I never went in there.

Q. When was it you say you saw Colonel Zacharie; when did you see this gentleman here?

1069 A. Three or four days ago, it was last Saturday.

Q. You inquired about the condition of your title then?

A. I wanted to, talk to him but he was in such a hurry he would not stay there to talk.

Q. He talked enough to you to let you know if Mississippi won your title was not good?

A. I thought may be Louisiana must stand good for what she sold, you know. You asked me what I bought this place for. Well, I bought there for the same purpose they are claiming those 18 miles for don't you see. I bought that for oysters, that is just what they are claiming too, those 18 miles too for oysters.

Q. The oysters are at the bottom of the business?

A. Yes sir, that is just what is the matter.

Q. That is all that territory in there is fit for?

A. That is all, nothing else; you can't raise cabbages very well, you can't raise anything except oysters, that is what it is for, they are going in pretty heavy for it too.

Q. Well, are you familiar enough with it to say whether the oysters in that territory are better than they are in other portions of the sound?

A. They are better. I have seen mighty fine oysters come out of there, of course that is all the best grounds.

Q. You mean in the marsh?

A. Yes sir, all the best ground.

Q. Best oyster grounds you mean?

A. Yes sir; you see they know exactly where to make those lines run.

Q. What is your son-in-law's name?

A. Mullholland.

Redirect examination.

By Judge GUION:

Q. You said a while ago, if I mistake not, that you had always heard that the line between Louisiana and Mississippi was the deep water channel between Cat island and Isle à Pitre; is that true?

A. Yes sir.

Q. Whom did you hear that from ?

A. By people just like me that didn't know anything more about the law, about the lines, than what I did, they just thought so.

Q. Did you hear that lately ?

A. I heard that a long time ago.

Q. Did you hear it when you were a child ?

A. Yes sir, I heard the navigators say so.

Q. Those navigators young or old men ?

A. Some were young and some were old.

By Mr. DYMOND :

Q. You said a moment ago that when you applied for the land around Creole gap, that you did so because you did not know any better and at that time thought that the land was in Mississippi. Why was it, you thought it was in Mississippi ?

A. Well, I thought that was in Mississippi like I told you once before.

1070 Q. Do you know of any reason for thinking so ?

A. No, I only thought that Isle à Pitre was in Mississippi, I didn't know, I didn't have any idea that it was owned by anybody at all, I didn't know it.

Q. Had you heard, before that, that the channel was the dividing line ?

A. I heard all my life that was the division line, that channel, but I didn't know that that division line threw this Isle à Pitre in Louisiana, you know, I didn't know that.

Q. Did you think about that when you wrote to Jackson about getting the land ?

A. No sir ; I did not.

Q. Did you think about it afterwards when you found out you could not get the land ?

A. Yes sir, when I found out I couldn't get it.

Recross-examination.

By Mr. McCLURG :

Q. You knew Creole gap was south of Cat Island channel ?

A. Yessir.

Q. You knew that at the time you applied to Mississippi to buy it ?

A. Yes sir.

Q. And you knew that at that time that it was in the State of Mississippi ?

A. Well at first I thought may be it was in there and applied there first before applying over on this side.

Q. Notwithstanding those facts you say that you always heard that was the dividing line, the channel ?

A. Yes sir, but I didn't know that threw in that ground or marsh either one side or the other to any man or State. I thought that

Government business there you know, I thought that was Government survey, the main channel, I didn't know this Isle à Pitre belonged to Mississippi or Louisiana, I didn't know it then at the time.

Q. You mean the Government line?

A. Yes sir.

Q. The deep water channel sailing line?

A. Yes sir.

Q. You mean by the Government line that it was for ships and vessels of heavy draft?

A. Yes sir, the main channel, that was the division line, you know, that is the line what I mean.

Q. You know how long it has been buoyed, that that line has been buoyed?

A. No sir, I couldn't tell you.

Redirect examination by Mr. DYMOND:

Q. Will you please look at this survey which, for purposes of identification will be marked Document No. 100, and state whether it is a sketch of the survey of your lands concerning which you have been testifying and which are located near Jack William bay?

1071 A. Yes sir, you can have this.

Q. You don't understand my question. Read the question back to the witness.

(Question read)

A. It seems like it. It is off the map from the customhouse here.

Q. Have you been on your land?

A. Not very much.

Q. Does this look like it from what you saw?

A. I never have been in there, never have been inside there.

Q. Was this given to you as a plan or sketch of your land?

A. Yes sir.

Q. You always recognized it as such?

A. I never saw the land down there.

By Judge GUION:

Q. Compare this sketch with the map Exhibit A of Mississippi that is before your eyes and see if it corresponds with the map Exhibit A down here in the territory that you claim as your property.

A. There are no lines on here like on here.

Q. No lines on what?

A. No section lines or nothing.

Q. On map Exhibit A?

A. Yes sir.

By Mr. DYMOND :

Q. You notice this long peninsular. Do you find the same on this map Exhibit A ?

A. It looks like it, don't it.

Q. We are asking you, you are not asking us. Do you notice this body of water that runs like a snake down into that land ?

A. Yes sir.

Q. Have you such a body of water on your map ?

A. Yes sir, that is right there. You see it is not all here, you can't see, there is more land there.

By Judge GUION :

Q. Who gave you this paper ?

A. I think Mr. Gilmore or Mr. Duke.

Q. Did Mr. Duke go down there and make a survey for you ?

A. I don't know if he did, I think he did.

JOSEPH C. GILMORE, witness, recalled on behalf of the State of Louisiana, testified as follows :

Direct examination.

By Mr. DYMOND :

Q. Did you transfer to Mr. Casimir Harvey certain lands located in the neighborhood of Jack Williams bay which you had acquired from the State of Louisiana ?

A. Yes sir.

1072 By Judge GUION :

Q. Was it to Mr. Casimir Harvey alone ?

A. No sir, it was to him and his son-in-law.

Q. Jeff Mulholland ?

A. Yes sir.

Q. Will you please look at these patents which are the originals of which copies are in evidence, marked Documents Nos. 82 and 83, and state whether you recognize them as the patents that were issued to you.

A. Yes sir.

Q. Will you now look at this sketch of survey marked Document No. 100 and state who Mr. W. D. Duke was.

A. He was a surveyor, he had been a surveyor for the parish of Saint Bernard.

Q. Did you cause those lands which were transferred by you to Mr. Casimir Harvey and Mr. Jeff Mulholland, to be surveyed by Mr. Duke ?

A. Mr. Duke was out there and went over the land here on this coast and verified the surveys on maps which I have previously offered here, of Mr. Richardson.

Q. What has become of Mr. W. D. Duke?

A. He is dead. He has been dead a good many years.

Q. What was Mr. Duke's profession?

A. He was a surveyor, a civil engineer.

Q. And he was a surveyor for the parish of Saint Bernard?

A. Yes sir.

Q. Was he a United States surveyor?

A. He had been a surveyor for the parish of St. Bernard.

Q. Was he also a deputy United States surveyor?

A. I think so; he so represented himself.

OFFER.—MR. DYMOND: In connection with the testimony of witness and that of Mr. Casimir Harvey, counsel for the State of Louisiana now offer, introduce and file in evidence, said Document No. 100 a copy thereof to be furnished to counsel for the State of Mississippi.

Q. You purchased, as shown by the records, a great deal of property from the State of Louisiana which is located in this area in dispute at present between the States of Louisiana and Mississippi. As you acquired title or patent from the State of Louisiana, did you or not, cause your patents to be recorded in the conveyance of the parish of Saint Bernard of the State of Louisiana?

A. We did, yes sir.

Q. Did you record all of them?

A. I think every one of the patents on this area here.

ADMISSION.—It is admitted by counsel for the State of Mississippi that the endorsement upon patent No. 751 being the original which Document No. 83 is a copy and which original belongs and is in the possession of Mr. Casimir Harvey and Jeff D. Mull, land, is in the handwriting of Charles M. Gardanne the deputy clerk and *ex-officio* recorder in this State of the parish of Saint Bernard; and that said certificate is in the following words "State of Louisiana, parish of St. Bernard, clerk's office, October 18th 1888. I do hereby certify that the within patent was this day duly recorded in my office in Book of Conveyances No. 1073 folio 196. Signed Charles M. Gardanne, deputy clerk and *ex-officio* recorder."

It is also admitted by counsel for the State of Mississippi that the certificate signed J. R. Ducros, deputy clerk and *ex-officio* recorder upon original patent No. 750 of which a copy has already been offered in evidence by the State of Louisiana and marked Document No. 82 is in the handwriting of J. R. Ducros, deputy clerk and *ex-officio* recorder of the parish of St. Bernard and is in the following language to-wit: State of Louisiana, parish of St. Bernard, clerk's office, October 15th 1888. I do hereby certify that the within patent No. 750 was this day recorded in my office in Book of Conveyances No. 17, folio 194. Signed J. R. Ducros deputy clerk and *ex-officio* recorder.

Q. Now, Mr. Gilmore, you transferred these two patents Nos. 750 and 751 to whom?

A. To Jeff D. Mulholland and Casimir Harvey. This is my handwriting on the back.

Q. Look at this one too, No. 751?

A. To Jeff D. Mulholland and Casimir Harvey.

Q. Then I understand, do I, that you transferred all of your right title and interest in the property described in these two patents Nos. 750 and 751 to Jeff D. Mulholland and Casimir Harvey?

A. Yes sir; the title was in my name and I turned it over to them.

Cross-examination.

By Mr. McCLURG:

Q. That is the property near Jack Williams bay?

A. Yes sir.

ADMISSION.—It is admitted by counsel for the State of Mississippi that patent No. 750 of which a copy has been already offered in evidence by the State of Louisiana, bears the following endorsement which is in the handwriting of J. C. Gilmore in whose favor the patent was issued, to-wit: "New Orleans, November 10th 1890. I hereby assign and set over to Jeff D. Mulholland and Casimir Harvey all my right, title and interest in and to the within patent and the property therein described and conveyed without warranty or recourse against me. Signed J. C. Gilmore, dated November 10th 1890."

It is also admitted by counsel for the State of Mississippi 1074 that patent No. 751, copy of which has been already offered in evidence by the State of Louisiana bears the following endorsement which is in the handwriting of J. C. Gilmore in whose favor the patent was issued, to-wit: "New Orleans November 10th 1890. I hereby assign and set over to Jeff D. Mulholland and Casimir Harvey all my right, title and interest in and to the within patent and the property therein described and conveyed without warranty or recourse against me. Signed J. C. Gilmore, November 10th 1890."

Mr. DYMOND: Counsel for the State of Louisiana, having procured official copies of the report of John Wheeler surveyor to A. G. McNutt governor of the State of Mississippi, December 13th 1839, being a survey of the coast of the State of Mississippi, with accompanying map, the whole thing being Senate Official Document of the First Session of the 26th Congress, page 163, printed by the United States Government, is, by consent of counsel for Mississippi substituted in lieu of Document No. 73 already offered.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of warrant No. 5696, swamp and overflowed lands, in favor of Ann B. Gordon, dated

April 28th 1859, and a certified copy of land warrant No. 7785 in favor of Henry Florence, dated November 22nd 1859, to be respectively known as Documents 101 and 102, copies thereof being tendered to counsel for the State of Mississippi.

Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned by the commissioner, to be resumed September 16th 1904, at the same time and place.

Resumption of Proceedings.

NEW ORLEANS, September 16th, 1904.

Pursuant to adjournment the hearing was this day resumed at the same time and place.

Present: Hon. W. D. Bullard, commissioner.

Hon. Walter Guion att'y general of the State of Louisiana.

Mess. John Dymond Jr. and F. C. Zacharie associate counsel for the State of Louisiana.

Hon. Monroe McClurg, associate counsel for the State of Mississippi.

1075 Miss MARIE SEEBOLD, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Miss Seebold, will you please look at this Hardee's official map of the State of Mississippi, approved under act of the legislature by Benjamin G. Humphreys governor, and state whether you were requested to color certain photographs which had been made from that part of this official Hardee's map which represented the area in dispute in this suit?

A. I was.

Q. Will you please look at this colored photograph which, for purposes of identification, is called map No. 65, and state whether that is the photograph that you have colored?

A. It is.

Q. Will you please compare the coloring on the original map with the coloring of the photograph and state by whom that coloring was made?

A. It was made by me.

Q. How does the coloring of the photograph compare with the coloring of the original?

A. It is exactly like it.

Q. Was that work done carefully by you?

A. Yes sir.

Q. And the colors reproduced represent the original colors on the original official map now before you?

A. Yes sir.

OFFER.—Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the photograph of the disputed area as extracted from the official map of Hardee of the State of Mississippi approved by Benjamin G. Humphreys governor of Mississippi, dated A. D. 1868, said map to be known as No. 65 a copy of which is tendered to counsel for the State of Mississippi.

No cross-examination.

LOUIS CUCULLU, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?

A. I am 65.

Q. Where do you reside?

1076 A. I am residing now in New Orleans.

Q. How long have you resided in New Orleans?

A. All my life.

Q. What official positions have you held during your life?

A. Well, I have held that of a councilman.

Q. Of the city counsel of New Orleans?

A. Yes sir.

Q. Are you connected with any bank here?

A. Yes sir.

Q. What bank and in what capacity?

A. I am president of the Peoples bank.

Q. Have you been in the habit of visiting the southern coast of Mississippi?

A. Yes sir.

Q. For how long?

A. From my infancy.

Q. Do you know the territory which lies south of the southern shore of Mississippi?

A. Yes sir.

Q. This broken portion particularly as appears on map No. 65 offered by Louisiana, what is that territory known as, amongst the people residing along the coast of Mississippi?

A. I always heard this part spoken of as the Louisiana shore, Louisiana marshes.

Q. Have you heard it called by any other name?

A. No sir.

Q. How often have you visited this Mississippi shore?

A. Well we used to go and spend every summer there, before the war.

Q. And after the war?

A. I have been several times on the coast since.

Q. And you never have heard it called by any other name than the Louisiana shore or the Louisiana marsh?

A. No sir.

Cross-examination.

By Mr. McCLURG:

Q. You have always heard that sound immediately south of the Mississippi shore called the Mississippi sound, have you not?

A. Must I give a full explanation of what I knew or heard from my youth, about it; or must I answer yes or no?

Q. Just answer yes or no?

A. I will simply state this, at the time that this Mobile line of steamers used to run, before the establishment of the Louisville and Nashville railroad, I always heard from my infancy up I may say until I left for the war, that what they called the sound was from, between the main land and the line of islands that existed, up to Mobile bay.

Q. Which line of islands do you have reference to?

A. You have Cat island, you have Ship island, you have Dauphin island and Horn island and all those islands.

Q. And your understanding has been that the sound extended between the shore and those islands?

A. Always did.

Q. And never beyond the islands?

1077 A. Never did.

Q. You notice from Cat island to the mouth of Pearl river there are some other islands and some of the Mississippi sound; where do you consider the southern boundary of the sound from Cat island to the mouth of Pearl river?

A. As far as my recollection of it and as far as my knowledge goes, I must tell you I am a sport, I am a great fisherman and a hunter, and I have always gone over the old railroad before the war, the old Mexican Gulf road that used to go to Proctorville, and I have hunted and fished on all that coast and I always considered and everybody else, that we were in Louisiana.

Q. You mean everybody else in Louisiana?

A. Always did. That is something like 45 years ago.

Q. The reason I make that modification is that some old fellows about your age, that lived in Mississippi always considered it Mississippi soil, so it depends largely on where you lived how you considered it?

A. Well, at Pass Christian where we were one of the first that went over there to establish ourselves a summer residence, my fam-

ily, we always considered this part to be Louisiana, because from our plantation, we lived in Louisiana at that time, there were no vessels, we took schooners and went through the Rigolets and went over to Mississippi, that was how we travelled at that time when I was a boy, and as far as I can recollect and as I have heard all the old people say, I have known all those people, the old Sauciers, in Pass Christian, they are still there, they are Mississippians, I always heard them talk about the Mississippi side and the Louisiana side, and they considered the outside part of these islands as the Louisiana side because when they wanted to go fishing or hunting, and I was of an age that I can recollect that, I have gone with them in their boats, they crossed over to the Louisiana side.

Q. When you struck the marsh you considered you had struck the Louisiana line?

A. Yes sir. Of course I don't know all the treaties etc., what they specified, but that is the impression that I have always been under.

Q. Do you mean to say that was the impression that was gathered from any study of the line fixed by law?

A. No sir, only by hearsay and what was considered generally.

Q. That the Mississippi line ran down to the marshes and stopped there and Louisiana began?

A. At the time I recollect the Mississippi sound, that is what they called it, Mississippi sound, in line with Cat island and all those islands.

Q. What did they call that between Point Clear or we will say Half Moon island and Malheureux point; what was that down there?

A. I suppose it was, as far as I can recollect it was always considered as crossing the Gulf and I suppose from those islands to the Louisiana marshes it was considered, that part of the water, as the Gulf, outside of Pass Marianne.

Q. Don't you think it is true that the people of Louisiana and Mississippi never considered themselves in the Gulf until they passed around Chandeleur, around east of Chandeleur, before they got into the Gulf proper; in other words, Chandeleur sound, Cat Island pass, Ship Island pass, and all those places, they were not considered the Gulf were they?

A. Well, of course we did not go that far, but I always understood we had to cross the waters, the Gulf, to go to the Louisiana side and I considered, from my knowledge of it, that the moment we left the sound we had to cross the Gulf before we reached that part of Louisiana, that is what I always considered.

Q. So, then, you think that the northern shore of Cat island is the southern boundary of the Mississippi sound?

A. That is how I always considered it to be.

Q. Now, going west from that then, into Lake Borgne, and to the mouth of Pearl river, you had to cross a part of the Gulf?

A. That is what we considered at that time. You know I couldn't tell whether it was the Gulf or not.

Q. Do you think there was any part of the gulf of Mexico proper between Bay St. Louis and Isle à Pitre, Grand pass, Three Mile bayou or Nine Mile bayou?

A. Well, that I couldn't answer with certainty.

Q. Has it not been universally regarded that the Gulf was to the east and southeast of the Chandeleurs and that between the Chandeleurs and Louisiana was the Chandeleur sound?

A. It may have been by mariners, but us, that had absolutely no object in learning exactly the thing, I couldn't answer you precisely on that point.

Q. Do you know such a thing as the Chandeleur sound?

A. No; whenever we went to the Chandeleurs, we simply said we were going to the Chandeleur islands.

Q. You don't know where Chandeleur sound is?

A. I never looked so close to that, never studied that geographically.

Q. Did you ever hear of it?

A. No sir.

Q. Did you ever hear of Cat Island pass?

A. Is that what you mean by Pass Marianne, I think——

Q. No, Pass Marianne is north of Cat island, as I understand it. Cat Island pass, as I understand it, is between Cat island and Isle à Pitre, Pass Marianne is north and northeast of Cat island?

A. That line of islands, and that Pass Marianne where the steamers used to go through to Mobile in low tide, at that time was considered so I always heard, as the line between the two States, whoever went on one side or the other was either in Mississippi or Louisiana.

Q. There have been some maps introduced in this case that showed that the sailing line or line of steamers from New Orleans to Mobile went north of Cat island and Ship island and of this line islands you speak of; that was one route. And another route was to go down through Cat Island pass to the northeast of Chandeleur islands and around to Mobile. Which of those lines have you reference to?

A. I understand exactly, I know very well all that line from Mobile; I have been so often all through that country, I understand exactly. I saw one map but I don't know that it could be found in this city. It was made for the use of the Mobile and New Orleans line of steamers. It used to be in the office of Mr. R. Heddes who was the agent of that line.

Q. When was that?

A. That was before the war; I saw that myself in the office because I used to go, very often there, nearly every day. But that is an old map and possibly that cannot be found. That is the only map I ever saw drawn where the line of steamers, their route was put exactly as you have got them across the Atlantic or Pacific.

Q. And that was between Cat island, and Ship island and the Mississippi sound?

1079 A. It was right along that whole line.

Q. And that is the line that you always considered was the dividing line between the two States?

A. That is always what I understood it to be.

Q. Have you any idea how much sea frontage that line, if it is the boundary line between the two States, would leave to the State of Mississippi?

A. From my recollection, I knew Mr. Quavers who used to be for years and years the keeper of Ship island and very often we saw him at home. He died I think about the year 1902 or 1903, about two years ago, in Biloxi, and I always heard him say it was to Ship island from the shore about 12 miles, I recollect that much. Now about the other measurements. I could not. I never had any interest to study that.

Q. This steamer line that you speak of from New Orleans to Mobile, is not more than 12 miles at any point from the Mississippi shore is it?

A. That is what I always understood. Of course I had no interest to go and measure those things, I couldn't say exactly.

Q. You have never been engaged in the oyster taking industry?

A. No sir, but I tell you what I did, I went out to Ship island and ate some mighty good oysters there.

Q. Did you ever go down through Nine Mile bayou?

A. Yes sir I have.

Q. I wish you would tell me, if you can, in passing through Nine Mile bayou down towards the Lake of the Mound, do you know where that is, Indian Mound bayou?

A. No, I don't recollect.

Q. Down towards Treasure bay?

A. I don't recollect, many of those things have escaped my memory. A man that goes out hunting does not go there to make a survey.

Q. Nor to establish State boundaries?

A. No sir.

Q. I want to ask you, if you can tell me, where the high tide mark is on the Louisiana land west of Nine Mile bayou?

A. I couldn't tell you.

Q. There is a high tide mark across the eastern boundary of St. Bernard parish somewhere, is there not, a place where the ebb and flow of the tide reaches?

A. Yes sir, there are many places. I have gone all through that St. Malo country.

Q. You know where Bayou aux Terre Boeuf is?

A. Yes sir.

Q. Now what I want to know is, north of Bayou aux Terre Boeuf where the high tide mark is on the Louisiana soil along the western coast of Three Mile bayou?

A. I have known where there were camps on Riviere au Chenes used to go through Bayou Terre Bœuf to reach there. Then I have known the encampments of the Malays that were there on St. Malo that is way off inside of the marsh further.

Q. Is St. Malo north of Terre Bœuf?

A. Oh, yes, it reaches toward the shore of Mississippi. And then I knew La Chinch, that is where the big settlements begin.

Q. Tell me if you can where is the point at Proctorville which the map shows to be at the southern shore of Lake Borgne, and I am sure you understand it that way, do you? Look at the map in front of you. You see Proctorville is right at the southern extremity of Lake Borgne. Now, run your finger from Proctorville due east, and tell me about where you strike the high tide mark.

1080 A. Where the camp was of those Malays on that river there, I can tell you I came very often and crossed from the club at Lake Catherine and crossed over here at Bay Biloxi, Little Biloxi—

Q. And came down Nine Mile bayou?

A. On here, yes sir, to go to Biloxi and fish.

Q. You failed to answer my question. Putting your finger on Proctorville and moving it directly eastward, where do you strike the high tide mark on the main land of Louisiana?

A. That I could not answer because those are things I never studied.

Q. You don't know?

A. No sir.

Q. Now, please go up a little higher on your map there and put your finger at Point aux Marchettes and then move eastward and tell me if you can where you strike the high tide mark on the Louisiana main land?

A. I tell you frankly I don't know.

Q. Does the high tide ever entirely over run Malheureux point?

A. On the edge I found out that it takes a good tide to go over—a heavy tide to go over the edges, they are always dry.

Q. It takes something above the ordinary high tide to go over Malheureux point?

A. Yes sir, I think it does.

Q. You notice Nine Mile bayou is the first water course eastward from Malheureux point. Is there not some place along the west shore of Nine Mile bayou down towards Point aux Marchettes and in the direction of Proctorville where the high tide stops?

A. That is exactly what I can't answer. You will agree with me that a man that goes out sporting is not going to survey the land or tide whether they are high or low, therefore it would be impossible for me to tell you whether—to tell the distance whether it is—

Q. I don't ask you for the distance. I ask you if it is not a fact if there is not some point about the western shore of Nine Mile bayou where the ebb and flow of the high tide mark on the Louisiana main land is; it stops somewhere and I want you to fix it a

near as you can according to your best judgment. I understand, of course, you never made any survey.

A. Like I tell you, on the shore, all along the shore of Lake Borgne and the Gulf, those marshes are always above water, and it takes a high tide to cover most of those marshes.

Q. And the most of them are covered by the high tide are they not?

A. That is what I understand.

Q. Hardee's map of 1868 has been introduced in evidence and I will ask you to please look at this map beginning at Malheureux point and going to the northeastern point of Isle à Pitre and tell me whether or not you find on this map a string of islands?

A. I see them there; but when I went in a boat I was not going to stop on all those islands.

Q. In passing you saw a number of islands?

A. I went right out to the place I wanted to go, whether for fishing or hunting. Of course I am acquainted with those things like all those men that go fishing and see a lot of things passing by.

Q. You saw no industrial life of any kind in there, any stores, habitations or houses?

A. No sir, the only thing that I ever heard was I know that one of the oldest families of Mississippi, the McCans, they are from Mississippi City I believe, they had cattle there, most of those 1081 people could give you testimony, they had cattle on all those islands and they owned—

Q. Which islands do you mean?

A. On the Louisiana side, they had cattle, even up to the parish of Plaquemines, that they sold since the war.

Q. Are you not referring to the cattle that Mr. Seal had on Chandeaur island and Cat island? He never had any cattle on Isle à Pitre or any islands—

A. I can't tell you on which, but I often heard of them.

Q. You never saw them?

A. No sir.

Q. Well, the record shows that Mr. Seal or Mr. — had cattle on Chandeaur and perhaps on Cat island, but nobody testified about any cattle being in the marsh and you never saw any in the marsh?

A. No sir.

Q. And in fact you never saw any on Chandeaur or Ship island or Cat island yourself?

A. I saw hogs.

Q. On what?

A. On all those islands.

Q. You mean on Cat island and Ship island?

A. There are still some in the marsh territory right along that coast.

Q. What?

A. Hogs, even on this coast.

Q. You are pointing to the north coast of Lake Borgne, that is not in controversy.

A. Well, right in here they had hogs.

Q. Now, you are pointing in the heart of St. Bernard parish; we are talking about the marshes?

A. I am talking about the marshes.

Q. Did you ever see any hogs on Isle à Pitre?

A. No sir, I never stopped on Isle à Pitre.

Q. Where was it you saw hogs?

A. I saw some of the hogs I believe on this island.

Q. That is Chandeleur island?

A. Yes sir, I saw them on Chandeleur island; I am telling you simply what I heard from people that had cattle there.

Q. I am asking you whether you saw any hogs in this marsh land?

A. No sir, I never went inside there, I never paid any particular attention to that.

Q. I suppose at this late date you do not remember any discussion before the war as to where the boundary was between Louisiana and Mississippi in those waters?

A. No sir. I must say the only thing I ever heard as I said before, was, on this side we called it the Louisiana side, that is all I can tell you.

Q. And on the other side what?

A. I mean all over; when we wanted to cross over to the marshes we called it the Louisiana marshes.

Q. You mean sailing from Mobile?

A. No, from Pass Christian, for instance, where I spent most of my youth, there in Mississippi, we would always, when we wanted to cross, say, let us go to the Louisiana marshes.

Redirect examination.

By Mr. ZACHARIE:

Q. You have said, in regard to what you have called the
1082 Louisiana marshes and the Louisiana shore, that we always called them so and so considered them. Who do you mean by we, do you mean Louisianians only or people from Mississippi living on that coast.

A. I mean all those people.

Q. You mean Mississippians as well as Louisianians?

A. Yes sir. I used to go with young Mississippians over there.

Q. Now you have mentioned that in going, in your hunting and fishing days, starting from the parish of St. Bernard, that you would go north to the channel, do you mean the channel that runs north of Grand island, Half Moon island and Round island?

A. Let me make it clear and you will know as well as I do what I am going to say what is the route that the people went for amusement. All these parties that went either for fishing or

hunting, they all went about the same route. Now when they would go for ducks and fish they would go for them and not to study the channels. Now, if you ask me about a line, that it came there for a specific purpose, I could not tell you, because I never went there to survey or study the country, I went there to fish or hunt ducks.

By Mr. McCURG:

Q. You never went to look for the State line?

A. No sir.

By Mr. ZACHARIE:

Q. Now, you have spoken about what was considered the boundary line. Will you look at map No. 57 offered by the State of Louisiana and you will see a channel running from the mouth of East Pearl river, running east and coming down between Cat island and Isle à Pitre. Is that the channel which you have testified to as the one that was considered the boundary line between Louisiana and Mississippi?

A. From what I understood, I will repeat it again, that they considered—of course I suppose they were all like myself, they had no interest in studying the geography or topography of that part of the boundary—they considered that line of islands and the sound, and after that was—

Q. Answer my question. Is that the channel which you spoke of as pursued by the Mobile boats, running out to a certain—continuing out to a certain point and then diverging and going down between Isle à Pitre and Cat island, is that the channel which you have alluded to as the one that was considered the boundary line between Louisiana and Mississippi; just answer that question?

A. You want me to show you exactly what they did and not what the map shows. I have gone over that 500 times so I ought to know that route. We passed St. Joseph island coming from Milneburg—

Q. Did you go through the Rigolets at that time?

A. Yes sir, followed that route to St. Joseph island, right into Bay St. Louis.

Q. Now is that the channel that goes down between Cat island and Isle à Pitre?

A. No sir.

Q. You mean to say that you followed that channel partly and then went up towards Mississippi, do you?

1083 A. You want to know the line of the steamers, I suppose?

Q. I am talking about the line going on to Mobile.

A. I don't know—

Q. Now, the line which you have described as the boundary, left Grand island and Grassy island and Round island to the south of that channel, did it not, as belonging to Louisiana?

A. I don't know about this outside island?

Q. That is south of that channel, south of the channel which the Mobile line of steamers pursued, those islands are all south of it are they not?

A. If you let me explain the route, and if I am wrong and don't come to your question, then we will begin over, but let me show the route. If you are trying to get what I know I am going to show you what I know, and then afterwards if it is not what you wish, then question me. Starting from Milneburg we reach the Rigolets, we go through the Rigolets and pass by the St. Joseph lighthouse.

Q. Did you pass north of Half Moon or Grand island?

A. No, because I never saw those islands, the route of the steamers was too far away to see those islands. From St. Joseph lighthouse we followed the course up to Bay St. Louis.

Q. In what direction?

A. This way.

Q. Isn't that northeast?

A. I suppose so, I have not the compass to see.

Q. Here is the arrow in front of you?

A. We followed the coast, we could see the coast very well, after reaching Bay St. Louis we go around there to Pass Christian and from there to Mississippi City and from Mississippi City to Biloxi and from Biloxi to Ocean Springs and then to Mobile, that is exactly the route we followed. Now if that is not what you want just ask me the question. That is what I know.

Q. You see on this map, do you know where these islands are, Grassy island, Grand island, Round island.

A. I heard of them, but I never saw them.

Q. Are they south of that channel, or not, in going from the Rigolets to Bay St. Louis?

A. How could I know that if I didn't see them, just now I told you so.

Q. Now, do you know, after passing St. Joseph island, whether there was another channel which went off to the southeast passing between Isle à Pitre and Cat island?

A. Yes, sir.

Q. Was that the main channel for large vessels?

A. It was a channel that was used for the Mobile line of steamers that came then at that time very much loaded and they were pretty large steamers; they took the outside pass; they came right inside of Cat island; I have seen them hundreds of times, that was done only in low tide and in winter.

Q. Was that the channel which was considered the boundary line between Louisiana and Mississippi?

A. I don't know whether they considered it at that time, that channel as the line itself, but what I always understood from all the old people over there that the line of islands constituted the line. That is what I always understood.

1084 Recross-examination.

By Mr. McCLURG:

Q. Look at this map about which you have just been examined, map No. 59, offered by the State of Louisiana. There is a channel that runs between Cat island, Ship island, Horn island and the Mississippi shore?

A. They used to call that Pass Marianne, I don't know whether that is correct.

Q. That is correct.

A. That is the channel that many vessels travelled from New Orleans to Mobile, that was the channel in winter especially.

Q. And that is the channel which you say those people considered on one side of it Louisiana and on the other side Mississippi?

A. No, I don't say that, I just said no, that I could not say that, but I recollect very well they considered that line the line of islands, but how far outside or how far inside—

Q. On the outside of the islands was Louisiana and on the inside was Mississippi?

A. All that was inside of the islands was Mississippi.

Q. And on the outside Louisiana?

A. Yes sir.

JOHN DYMOND, JR, is recalled by the State of Mississippi for further cross examination.

By Mr. McCLURG:

Q. I notice in the original bill of complaint, Mr. Dymond, upon which you are marked as counsel in this cause, that you refer to the reconnaissance of the Fish Hawk, and you filed an exhibit to the bill, a map filed with the report of that reconnaissance showing a portion of the oyster beds and some of the soundings, and I infer from the draft of the bill that some of the information obtained by you in preparing the original bill of complaint was taken from that reconnaissance and the Report of the United States Commission of Fish and Fisheries, George C. Bowers Commissioner, Report on the Oyster Beds of Louisiana by H. F. Moore, Washington, Government Printing Office, 1899. It seems that this reconnaissance by the Fish Hawk was the result of a resolution passed by the legislature of Louisiana which Hon. Adolphe Meyer who is a member of Congress from this State as I understand it, presented in Congress, and this reconnaissance was ordered accordingly. In the rebuttal testimony on the part of Mississippi I will offer this report in evidence to show that the Fish Hawk map filed with your bill is not claimed to be accurate and that the survey and reconnaissance by the Fish Hawk was imperfect and the report thereof was not made by Lieut. Franklin Swift whom it had been intended should make the report. You will notice on page 49 and 50, statements in the report

that it was to the effect that it was not thorough and it was a hurried examination and especially at the of page 49 the reporter says "Contrary to expectation was found that the topography in general had not 1085 gone many important changes since the survey which the Coast Survey charts were based and several could be identified and located with sufficient accuracy to serve purpose of a reconnaissance" and similar expressions throughout report which indicates that it was not intended to be an accurate survey or that the map accompanying it was accurate. I call attention to the fact that the writer of the report acknowledges indebtedness to Col. F. C. Zacharie, Hon. E. McCulloch, Hon. Ad Meyer and Hon. S. P. Henry, for valuable assistance and information and to Mr. F. F. Hansell for the use of his yacht in visiting St. Bernard beds in August 1897, for the purpose of asking whether these gentlemen were not then and are now citizens of State of Louisiana?

A. Yes sir, they were and are.

Q. And the Colonel F. C. Zacharie mentioned here is one of counsel in this case?

A. Yes sir.

Q. Have you any personal knowledge, Mr. Dymond, of that survey?

A. There was no survey. The purpose of that expedition was to locate the natural oyster reefs and to examine them and make a report. Dr. Moore was the oyster expert of the Bureau of Fisheries of the United States Government; Lieut. Swift was also a certain extent pretty well posted on the oyster industry but not well posted as Dr. Moore. Lieut. Swift had taken charge in the survey of the Apalachicola waters in Florida a report of which was previously made on the oyster conditions existing in that portion of Florida, but it was erroneous in regard to St. Bernard that they made a map at all; the other parishes, Plaquemine, Jefferson, Terrebonne and other localities visited by Dr. Moore he merely mentioned his report and described the conditions without essaying to show with the assistance of any map where the oyster beds were located. I understood that Dr. Moore or the topographer in making up the map took the data which was originally compiled by the Coast and Geodetic Survey and shown in the Land Office of the United States in making up this map of that portion of St. Bernard.

Q. Exactly so, but the purport of my question was whether any actual surveys were made to locate the boundaries of St. Bernard parish or the lines of township and range?

A. No sir; there was none.

Q. Then I want to ask you, Mr. Dymond, with reference to the first annual report of the Oyster Commission of Louisiana to the legislature and General Assembly, dated from August 11th 1902 to January 31st 1904, whether Mr. S. H. Nunez a member of that commission, Mr. Breaux, Mr. Cage, Mr. Smith and Mr. John Dymond

Jr., are the same persons who have testified on the part of Louisiana in this case?

A. Yes sir.

Q. I notice in this report that the oyster commission called upon Mr. J. B. Baylor to prepare a written report to your commission to recommend such changes in the present oyster laws of Louisiana as would seem to him to encourage a development of the oyster industry in the State of Louisiana. He is the same Mr. Baylor who testified in this case?

A. Yes sir. With the assistance of our Congressmen, General Adolph Meyer endeavored to get the United States Fish and Fisheries Commission to co-operate with us in developing the 1086 oyster industry in Louisiana and investigating it from a scientific point of view. One of the greatest questions that we were confronted with was to devise an intelligent system by which we could locate the surveys of private leased bedding grounds and the department of Coast and Geodetic Survey at Washington had a balance which was available on the request of the head of another department, and the Fish and Fisheries Commission or the superintendent of that body got the United States Coast and Geodetic Survey to send Mr. Baylor down here and he co-operated with us in the matter of locating township and range lines for the purpose of locating our surveys of private leased bedding grounds and devise and recommend a system whereby we could effectively carry out all future locations of that character.

Q. When was that?

A. That was, I should judge, about, a little over a year ago. You said when was that?

Q. That he came down here to devise with you about it?

A. He made two trips. He first came down here in the spring of 1903, and worked for some time using the oyster commission's patrol boat and I think left here about the month of May or June; then he came down again the following winter and was here in the spring of 1904. His first work was in the neighborhood of St. Bernard parish and his work on the second trip was down around the mouth of the Mississippi river to the eastward in the neighborhood of Cubes gap and Paptiste Collette.

F. C. ZACHARIE, witness sworn on behalf of the State of Louisiana, testified as follows:

I wish to state that in regard to the mention of my name in connection with the report on the oyster beds of Louisiana by H. F. Moore, my only connection with that is, that having written an essay on the general subject of the oyster fisheries of Louisiana for which I was employed by the Manufacturers Record of Baltimore, Dr. Moore the biologist of the Fishery Commission brought a letter of introduction to me and asked my assistance in getting proper accommodation for visiting the oyster beds of Louisiana. I succeeded in getting the loan of Mr. Hansell's nap-tha or gasoline

launch and at the request of Dr. Moore secured for him a pilot to take him out to a portion of the oyster beds located in the neighborhood of St. Bernard and I accompanied him at his request on that trip to the oyster beds of St. Bernard. The trip had nothing to do at all with any boundary question. It was simply a courtesy that I showed Dr. Moore. Subsequently when Dr. Moore returned to the city of New Orleans I gave him letters of introduction to gentlemen living west of the Mississippi river, in order that they might assist him in inspecting the oyster beds of Louisiana to the westward of the Mississippi river. My connection with Dr. Moore had nothing at all to do with the boundary question in any way in the world nor was it ever mentioned or discussed between us.

1087 By Mr. McCLURG :

Q. One question, Colonel, that I want to ask you in conclusion, is, of you and Mr. Dymond who has just left the stand, whether these services and reconnoissances and work done by Mr. Baylor were not *ex parte* ?

A. I don't know anything about that.

Mr. Dymond what do you say about it. Mississippi was not invited to take any part ?

Mr. DYMOND : What the Baylor —

Mr. McCLURG : Yes.

Mr. DYMOND : That had nothing to do with the boundary line.

Mr. McCLURG : I know but it has something to do with it now because the result of his work is used not only in your bill indirectly but directly by his testimony showing his familiarity with it. You used him to good effect in his testimony by reason of his having been out there and my sole purpose now is to show that Mississippi knew nothing of that and had nothing to do with it, it was *ex parte*.

Mr. DYMOND : In answer to that question, unquestionably Mississippi had no knowledge, officially, of the surveying work being done here by Mr. Baylor of the United States Coast and Geodetic Survey or the Fish Hawk reconnoissance. On the other hand it is equally true that Mr. J. B. Baylor's work had no connection intentionally with the boundary dispute between Louisiana and Mississippi.

By Judge GUION : Counsel for the State of Louisiana announce their endeavor to have produced as a witness in this case Hon. F. A. McLain member of Congress from the State of Mississippi and offer and produce and file in evidence the subpoenas issued for service upon him with the returns thereon which read as follows :

"United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Gloster, Mississippi :

You are hereby commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans (in clerk's office, U. S. district court, room No. 4) on Friday the 26th day of August 1904 at 11 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana vs. State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La. Aug. 19, '04.

(Signed)

FRANK H. MORTIMER,
Commissioner."

1088

Return of Sheriff on Above.

"I have this day executed the within writ personally by leaving a true copy of this writ at the residence of F. A. McLain with his daughter who is over the age of sixteen and was willing to take and deliver same.

This August 22nd A. D. 1904.

(Signed)

W. H. BATES, Sheriff."

"United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Gloster, Mississippi :

You are hereby commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans, (in clerk's office, U. S. district court, room No. 4) on Tuesday the 6th day of September 1904, at 10.30 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana vs. State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La. August 31, 1904.

(Signed)

FRANK H. MORTIMER,
Commissioner."

Return of Sheriff on Above.

"The within named F. A. McLain not found in my county.
This Sept. 5th 1904.

(Signed)

W. H. BATES, Sheriff."

"United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Gloster, Mississippi :

You are commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans, (in clerk's office, U. S. district court, room No. 4) on Friday the 16th day of September 1904, at 10.30 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana vs. State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La. Sept. 10, '04.

(Signed)

FRANK H. MORTIMER,
Commissioner."

Return of Sheriff on Above.

"The within named F. A. McLain not found in my county.
This the 13th day of Sept. 1904.

(Signed)

W. H. BATES, Sheriff."

"United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Hot Springs, Arkansas :

You are hereby commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans, (in clerk's office, U. S. district court, room No. 4) on Friday the 16th day 1089 of September 1904, at 10.30 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana vs. State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La., Sept. 10th 1904.

(Signed)

FRANK H. MORTIMER, Comm'r."

Return of Marshal on Above.

"Received this subpoena Sept. 13, at Little Rock in the eastern district of Ark. and after diligent search the within named F. A. McLain could not be found in the eastern dis. of Ark.

(Signed)

A. S. FOWLER,
U. S. Marshal,
By F. D. LEARNING, Deputy."

ADMISSION.—It is admitted by counsel for Mississippi that the letter dated Gloster, Mississippi, 10th September 1904 addressed to Hon. F. H. Mortimer, New Orleans, is written by Hon. F. A. McLain and that the same is in the following language, to-wit:

"GLOSTER, MISS., 9 / 10 / 04.

Hon. F. H. Mortimer, New Orleans, La.

DEAR SIR: On my return home Sept. 3rd the enclosed subpoena was handed to me (by a member of my family) which explains itself. I did not know of the existence of the subpoena until my return home Sept. 3rd and you will note the subpoena required my appearance before you on Friday the 26th day of August last. Since my return home I have been sick in bed with rheumatism and am so afflicted now, and I will leave for Hot Springs Ark. tonight. Should you still need me, if you will notify me the day on which you require my presence I will come down. I could not do so now for I am suffering intensely with rheumatism and fever, but I hope to be well and at home within the next ten days or two weeks. Any time after this I can come down upon short notice.

I assure you my non-appearance before you on August 26th was caused for the reason above stated—that I did not know of the existence of the subpoena until Sept. 3rd of this month, and since then I have been sick. I hope you did not enter a penalty against me for non-appearance.

Yours sincerely,
(Signed)

F. A. McLAIN."

Mr. DYMOND: The evidence in rebuttal on the part of the State of Louisiana is this day closed, with the agreement on both sides that either side shall have the right up to October 1st to introduce any documentary evidence or maps which they may deem necessary and thereupon the commission was adjourned to meet in Jackson, Mississippi, on Thursday September 22nd 1904, at 10 o'clock a. m. at the office of the attorney general of the State of Mississippi.

FRANK HASTINGS MORTIMER,
Commissioner.

1090 In the Supreme Court of the United States, October Term
1904.

STATE OF LOUISIANA	}	Original Bill, No. 11.
vs.		
STATE OF MISSISSIPPI.		

I, Reginald H. Carter, appointed stenographer by the Honorable Frank H. Mortimer, commissioner appointed by the Supreme Court of the United States in the above entitled and numbered proceeding, do hereby certify, that under the agreement between counsel for the respective parties therein of record, I took testimony on behalf of the State of Louisiana at the several sittings the commission held in the city of New Orleans, and that a true and faithful transcript thereof is contained in the record of testimony of the State of Louisiana in volumes I., II., III., and IV., beginning on page 1, and ending on page 1477.

In witness whereof, I have signed these presents at the city of New Orleans, State of Louisiana, this 23rd day of February, A. D. 1905.

REGINALD H. CARTER.

1091

COMPLAINANT'S EXHIBITS.

1092

DOCUMENT No. 1.

Office of Police Jury of the Parish of Saint Bernard.

1st ward, Sebastian Roy.
 2nd " Gustave Jacques.
 2rd " Lovinski Nunez, president.
 4th " Adam Estopinal.
 5th " Henry Verret.
 6th " Nick Fernandez.
 7th " A. C. Ruiz.
 Alcide Gutierrez, secretary.
 J. C. Bourg, treasurer.

ST. BERNARD, P. O., LA., —, 190—.

Whereas, it has come to the knowledge of this police jury that a great number of citizens of other parishes and of the State of Mississippi are fishing oysters within the limits of this parish, in contravention of the State oyster law, and the police jury being desirous of correcting such violations of the law,

Be it resolved, That the president of the police jury is hereby authorized and empowered to equip and man a boat for the purpose of sending an expedition to the oyster reefs; and

Resolved further, That the object of said expedition being, primarily, the gathering of all information essential for the proper enforcement of the law, the parties composing the said expedition are hereby instructed to make a protracted cruise, covering all the oyster territory and make an intelligent report of all information gathered to this police jury.

(Endorsed.)

I hereby certify the reverse hereof to be a true and correct copy of resolutions adopted by the police jury of the parish of St. Bernard, on January 10th, 1898.

ALCIDE GUTIERREZ,
 Secretary of the Police Jury, Parish of St. Bernard, La.

(Endorsed:) Resolutions of police jury parish of St. Bernard January 10, 1898. Document No. 1. Offered by State of Louisiana Apr. 4, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1093

DOCUMENT NO. 2.

Office of the Police Jury of the Parish of St. Bernard.

1st ward, Sebastian Roy.
 2nd " Gustave Jacques.
 3rd " Lovinski Nunez, president.
 4th " Adam Estopinal.
 5th " Henry Verret.
 6th " Nick Fernandez.
 7th " A. C. Ruiz.
 Alcide Gutierrez, secretary.
 J. C. Bourg, treasurer.

ST. BERNARD P. O., LA., —, 190—.

On motion of Mr. Verret, the sum of (57 00 / 100) fifty seven dollars is hereby appropriated by the police jury to defray the expenses incurred by the officers sent out to the oyster reefs, in accordance with resolution of Jan. 10th, 1898.

The foregoing is a true and correct copy of a motion adopted by the police jury of the parish of St. Bernard, on Feb'y 7th 1898.

ALCIDE GUTIERREZ,
 Secretary Police Jury, Parish of St. Bernard, La.

(Endorsed :) Resolutions of police jury parish of St. Bernard February 7th 1898. Document No. 2 offered by State of Louisiana Apr. 4, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1094

DOCUMENT NO. 3.

Office of the Police Jury of the Parish of St. Bernard.

1st ward, Sebastian Hoy.
 2nd " Gustave Jacques.
 3rd " Lovinski Nunez, president.
 4th " Adam Estopinal.
 5th " Henry Verret.
 6th " Nick Fernandez.
 7th " A. C. Ruiz.
 Alcide Gutierrez, secretary.
 J. C. Bourg, treasurer.

ST. BERNARD P. O., LA., —, 190—.

On motion of Mr. Verret, it was resolved by the police jury of the parish of St. Bernard, that an appropriation of (\$75 00 / 100) seventy five dollars be made to defray the expenses of the oyster committee.

appointed by Gov. Heard to confer with a like committee from the State of Mississippi on the matter of the State boundary line.

The foregoing is hereby certified to as being a true and correct copy of a resolution adopted by the police jury of the parish of St. Bernard, on March 2, 1901.

ALCIDE GUTIERREZ,

Secretary of the Police Jury, Parish of St. Bernard, La.

(Endorsed :) Resolutions of police jury parish of St. Bernard. March 2, 1901. Document No. 3 offered by State of Louisiana, Apr. 4, 1904. Frank H. Mortimer. Supreme Court U. S. Filed March 13, 1905. James H. McKenney, clerk.

1095

DOCUMENT No. 4.

Office Oyster Commission of Louisiana.

NEW ORLEANS, LA., September 9th, 1902.

Oyster Commission of Louisiana met this day in special session.

Members present: James M. Breaux, president; Thomas Shannon, Jr., N. H. Nunez, Frank P. Parra and attorney John Dymond, Jr. Absent: Ben Mitchell.

On invitation from President Breaux the Oyster Commission of Mississippi, together with their attorney and chief inspector presented themselves, and after a lengthy address of welcome by President Breaux, the Oyster Commission of Louisiana and Mississippi convened jointly.

On motion of Mr. Breaux, duly seconded by Mr. Nunez, Mr. Hatlestad, president of the Oyster Commission of Mississippi was elected chairman of the joint meeting, and John R. Langridge was elected secretary.

Extract From Minutes of a Joint Conference of the Oyster Commissions of the States of Louisiana and Mississippi, Held at New Orleans, La., Tuesday, September 9th, 1902.

Present: James M. Breaux, president; Frank P. Parra, Thomas H. Shannon, Jr., N. H. Nunez, Louisiana commissioners; John R. Langridge, secretary, John Dymond, Jr., attorney; Harry Cage, chief inspector; H. C. Smith, surveyor oyster commission.

J. A. Hatlestad, president; Frank J. Ladner, Ferdinand Patenotte, O. Y. Cassibry, J. D. Minor, Mississippi commissioners; F. S. Hughes, secretary, Messrs. McDonald attorney, Mosley chief inspector.

On motion of Commissioner F. J. Ladner of Mississippi, seconded by Commissioner N. H. Nunez of Louisiana, the following resolution was adopted:—

Be it resolved by the Oyster Commissions of the States of Louisiana and Mississippi, in joint conference, that all the water territory embraced within the following limits, to-wit:

Beginning at a point in the center of the mouth of Pearl river, thence in a south easterly direction to Malheureux point, thence in an easterly and north easterly direction following the shore lines to Grand pass, thence along the western shore line of Grand pass, thence easterly to the southernmost point of Sundown island, thence in a northeasterly direction to the center of deep water channel called Cat Island pass, and thence following the deep water channel, westwardly, passing between Grassy island and St. Joseph light house to the point of beginning;

Shall, pending the final decision by the Supreme Court of the United States in the boundary suit to be instituted, remain a common fishing ground to be fished by boats of either States in accordance with, and upon compliance with the laws of either State, and inspectors and officers of the respective commissions (oyster) will govern themselves accordingly.

We certify the above and foregoing to be a true extract as aforesaid.

J. A. HATLESTAD,
Chairman Joint Conference Oyster
Commissions of Louisiana and Mississippi.

JNO. R. LANGRIDGE,
Secretary Joint Conference Oyster
Commissions of Louisiana and Mississippi.

I hereby certify that the above and foregoing is a true and correct copy of the minutes of a meeting held on September 9th, 1905, jointly between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi, as taken from the records of my office.

A. G. GUGES, [SEAL]
Secretary Oyster Commission of Louisiana.

Endorsed: Document No. 4 Offered by State of Louisiana, April 5, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1096

DOCUMENT No. 5.

EXECUTIVE DEPARTMENT,
JACKSON, MISS., December 8th, 1902.

His excellency Gov. W. W. Heard, Baton Rouge, La.

MY DEAR GOVERNOR: Replying to your favor of December 5, 1902, advising joint meeting of the oyster commission of our respective States and suggesting Wednesday the 17th instant at 12 o'clock at No. 339 Carondelet street New Orleans, I beg to thank you for

for the careful and courteous consideration which you have given the subject matter in question, and to say that owing to the fact that the 17th of December will conflict with an engagement which I had previously made I took up the subject with Hon. John Dymond, Jr., attorney for the Louisiana Oyster Commission, who in turn arranged with the president of said commission for the said joint meeting to occur on the 16th instead of the 17th of December, and I indulge the hope that this date will meet your approval and also of our commissions, and that I shall have the pleasure of meeting you on the occasion named and that our joint commissions will have the benefit of your co-operation and wise counsel looking to a just and amicable adjustment of the oyster disagreement. I have advised the Mississippi commission of the above proposed arrangement and asked compliance and co-operation on its part.

I have the honor to be, very sincerely,

A. H. LONGINO, Governor.

Endorsed: Document No. 5 offered by State of Louisiana Apr. 5, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1097

DOCUMENT NO. 6.

"Mississippi Boundary Commission.

On February 9, 1901, I appointed the following named gentlemen as commissioners to confer with a like commission appointed by the governor of Louisiana to consider the water boundary line between the two States, and arrange for the easy location and identification of the same by a proper system of buoys, to wit:

Hon. J. I. Ford, Scranton, Miss.

Hon. E. J. Bowers, Bay St. Louis, Miss.

A. Keller, Bay St. Louis, Miss.

Hon. W. A. White, Biloxi, Miss.

Hon. H. T. Howard, Biloxi, Miss.

This commission met at Biloxi and elected H. T. Howard chairman and J. I. Ford secretary. Their report, which is transmitted to you, will acquaint you with the whole matter, and from which you will find that they suggest a friendly suit in the Supreme Court of the United States as the best method to fix the true boundary between the two States. I submit the matter for such legislation as in your judgment is best."

STATE OF MISSISSIPPI, {
Hinds County. }

I do hereby certify that the above and foregoing is a true and correct copy of that part of a message relative to the Mississippi bound-

ary commission sent to the legislature by the governor of the State of Mississippi at its meeting in January, 1902.

Witness my signature this the 29th day of March, A. D. 1904.

[SEAL.]

GEO. E. MYERS,
Clerk of Supreme Court.

(Endorsed :) Report of A. H. Longino governor of Mississippi to Mississippi legislature. Document No. 6 offered by State of Louisiana April 5, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

(Here follows diagram marked Document No. 7, endorsed as follows :)

1098

(Endorsed.)

DOCUMENT No. 7.

Offered by State of Louisiana Apr. 6, 1904.

Frank H. Mortimer, Commissioner.

District, L 8

to Mississippi River

TABLE OF CONTENTS

No	Area	No	Area	No
1		21		21
11		22		22
12		23		23
13		24		24
14		25		25
15		26		26
16		27		27
17		28		28

Total Area

Per cent of the Area

FOLD OUT IS TOO LARGE TO BE FILMED

declared void, the aforesaid board shall not reimburse to the said purchaser any sum whatsoever.

This sale is made and accepted for and in consideration of the price and sum of sixty-three & 75/100 dollars (\$63.75) cash, which the purchasers have presently paid in ready current money unto the said John Dymond, president, who acknowledges the receipt thereof and grants full acquittance therefor.

By reference to the certificates of the clerk and recorder of the parish of St. Bernard, it appears that the above described lands were not alienated by the State of Louisiana, except by the sale made to the Board of Commissioners for the Lake Borgne Basin Levee District; and by the same certificate it appears that the said lands were not heretofore alienated by the present vendor. The taxes of the year 1902 are assumed by the purchaser.

To have and to hold the above described lands unto the said purchasers, their heirs and assigns forever.

Thus done and passed in the parish of St. Bernard, on the day month and year first above written, in the presence of Messrs. John Dymond, Jr., and Milton P. Doullut competent witnesses who have signed their names hereto, with the said appearers and me notary, after due reading of the whole.

1101	(Original signed)	JOHN DYMOND, President.
	" "	L. LOPEZ.
	" "	W. K. M. DUKATE.
	" "	JOHN DYMOND, JR.
	" "	M. P. DOULLUT.
	" "	JAS. D. ST. ALEXANDRE,
		Not. Pub.

I hereby certify the foregoing to be a true copy of the original act which is of record in my notarial archives.

In testimony whereof, I have hereunto affixed my hand and the impress of my notarial seal at the parish of St. Bernard, State of Louisiana on the 2d day of April, A. D. 1904.

[SEAL.] JAS. D. ST. ALEXANDRE, Not. Pub.

I hereby certify that the original of the foregoing act was duly recorded at the parish of St. Bernard, on the 15th day of March, A. D. 1902, in Conveyance Book No. 20, folios 77 and 78.

Clerk's office, parish of St. Bernard, April 2d, 1904.

[SEAL.] JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

(Endorsed :) Document No. 8. Offered by State of Louisiana April 8, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed March 13, 1905. James H. McKenney clerk.

1102

DOCUMENT No. 9.

DEPARTMENT OF COMMERCE AND LABOR,
WASHINGTON, April 7, 1901.

I hereby certify that the annexed is a true copy of the original correspondence of January and February 1901 between Honorable F. A. McLain and the Superintendent of the Coast (*on file in the*) and Geodetic Survey relative to information pertaining to the boundary between the States of Louisiana and Mississippi.

ANDREW T. BRAID,
Assistant in Charge of Office Coast and Geodetic Survey.

OFFICE OF THE SECRETARY.

I hereby certify that Mr. Andrew Braid who signed the foregoing certificate, is now, and was at the time of signing, assistant in charge of office Coast and Geodetic Survey and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce and Labor to be affixed, this 7th day of April one thousand nine hundred and four.

[SEAL.]

GEO. B. CORTELYOU,
Secretary of Commerce and Labor.

1103

Copy.

HOUSE OF REPRESENTATIVES U. S.
WASHINGTON, D. C., 1, 27, 1901.

Hon. O. H. Tutman, Supt. C. & G. Survey, Washington, D. C.

DEAR SIR: I herewith enclose to you a letter from Mr. I. Heidenheim of Biloxi, Mississippi, which fully explains itself. If you can furnish the information he seeks I would appreciate it.

While the letter says "Give us all the information on record at Washington, bearing on the question of the boundary line between Louisiana & Mississippi," I think he *only* wants that information pertaining to boundary line at or near the coast.

Very respectfully,

(Signed)

F. A. McLAIN.

Copy.

F.

TREASURY DEPARTMENT,
COAST AND GEODETIC SURVEY,
WASHINGTON, February 8, 1901.

Hon. F. A. McLain, House of Representatives.

DEAR SIR: I send you herewith a report and three sketches showing what information we have been able to obtain regarding the

water boundary of Mississippi and Louisiana. Like all boundary questions, much is left to be desired on the score of a clear definition in the original acts.

Respectfully,

O. H. TITTMAN,
Superintendent.
F. W. P.

1104

Copy.

F.

TREASURY DEPARTMENT,
COAST AND GEODETIC SURVEY,
WASHINGTON, February 1, 1901.

Hon. A. F. McLain, House of Representatives.

DEAR SIR: The information in regard to the Mississippi-Louisiana boundary asked for in your letter of the 27th ultimo, has been collected and will be sent you as soon as it can be put in proper form, probably early next week.

Respectfully,

O. H. TITTMAN,
Superintendent.
F. W. P.

Endorsed: Document No. 9 offered by State of Louisiana, April 13, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1105

DOCUMENT NO. 10.

DEPARTMENT OF COMMERCE AND LABOR,
COAST AND GEODETIC SURVEY, WASHINGTON, —.

Hon. Walter Guion, attorney general, State Louisiana, New Orleans, La.

SIR: Your telegram April 11th asking that two certified copies of the letter of I. Heidenheim referred to in letter of McLain of 27th January 1901, be sent you is received.

In reply I beg to state that the letter referred to is not on the files in this office having been returned to Mr. McLain at his request.

Respectfully,

F. W. PERKINS,
Acting Superintendent.

Endorsed: Document No. 10 offered by State of Louisiana Apr. 13, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1106

DOCUMENT NO. 11.

DEPARTMENT OF COMMERCE AND LABOR,
WASHINGTON, D. C., March 18, 1901.

I hereby certify that the annexed is a true copy of the original report of January 30, 1901, and accompanying sketches, submitted by Mr. W. C. Hodgkins, assistant Coast and Geodetic Survey, on the boundary line between the States of Mississippi and Louisiana in the waters bordering upon the gulf of Mexico.

ANDREW BRAID,
Assistant in Charge of Office Coast and Geodetic Survey.
(Official Title.)

OFFICE OF THE SECRETARY.

I hereby certify that Andrew Braid, who signed the foregoing certificate, is now, and was at the time of signing, assistant in charge of office, Coast and Geodetic Survey and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce and Labor
[SEAL.] to be affixed this 19th day of March, one thousand nine hundred and four.

GEORGE B. CORTELYOU,
Secretary of Commerce and Labor.

1107 All communications should be forwarded under cover to the "Superintendent U. S. Coast and Geodetic Survey, Washington, D. C."

TREASURY DEPARTMENT,
OFFICE OF THE COAST AND GEODETIC SURVEY,
WASHINGTON, D. C., January 30, 1901.

Mr. O. H. Tittman, Superintendent C. & G. Survey, Washington, D. C.

SIR: I beg to submit the following report upon the question of the boundary line between the States of Mississippi and Louisiana, in the waters bordering upon the gulf of Mexico, referred to in the letter of Hon. F. A. McLain, M. C., dated January 27, 1901, and in the letter of Mr. I. Heidenheim, of Biloxi, Miss., dated January 23, 1901, and transmitted by Mr. McLain.

I have consulted, in my search, the acts of Congress under which both Louisiana and Mississippi were admitted to the Union, and other authorities, like the State codes, in the law library of Congress.

I have also consulted numerous atlases and maps of various scales and dates, both in the library of the Coast and Geodetic Survey and in the Library of Congress.

In addition, I have investigated the information which is on

file in the General Land Office, where every facility was kindly afforded me.

Appended to this report are tracings of the locality in question, compiled from Coast & Geodetic Survey charts Nos. 19, 190 and 191. These are identical in regard to the natural outlines, and serve to illustrate, by means of the colored lines, the differences between various authorities.

The following facts appear on record. According to the treaty with Spain, concluded October 27, 1795, the parallel of 31° north latitude formed the southern boundary of the United States from the Mississippi to the Apalachicola.

1108 By the treaty of Paris, concluded April 30, 1803, the Louisiana territory was ceded by France to the United States and on March 6, 1804, was divided into two Territories, called Orleans and Louisiana.

By the act of April 8, 1812, the Territory of Orleans was admitted to the Union as the State of Louisiana, (the Territory of Louisiana taking the name of Missouri). In this act the eastern and southern limits of the State are thus described: "Down the said river" (Mississippi) "to the River Iberville" (Bayou Manchac) "and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning" (the mouth of the River Sabine) "including all islands within three leagues of the coast."

The boundary line thus established is shown, in part, on the map marked # 1.

In 1812, also, Congress added to Louisiana the territory lying to the eastward of the boundary just described and limited by the parallel of 31° on the north and by the Pearl river, through its eastern mouth, on the east. The territory south of 31° and between the Pearl and Perdido rivers was added to the Territory of Mississippi. It will be noticed that all of this was Spanish territory under the treaty of 1795, but the United States apparently claimed it by right of occupation and in 1819 this occupation was confirmed by the cession by Spain of all of her territory east of the Mississippi river.

In 1817 Congress, by act dated March 1st, provided for the admission to the Union of the western part of the Mississippi Territory under the name of the State of Mississippi. The boundaries of the new State are described as follows:

SEC. 2. And be it further enacted That the said State shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north west corner of the county of Washington, thence due south to the gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl

river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude, to the Mississippi river, thence up the same to the beginning."

The six league limit described by the above, as well as the three league line mentioned in the Louisiana act are shown on the map marked #2.

A. "league" is generally understood to mean a distance of three miles which may be either statute or nautical miles. As the acts in question do not specify either, both are shown. It is evident that there is a chance for uncertainty as to what line constitutes the "coast" of Louisiana within the meaning of the act, and several different lines might be drawn, according to the way in which this expression is interpreted. These are illustrated upon the drawing. It is pretty evident, at any rate, that the extensive group of islands, of which Île au Pitre forms the northeastern angle, is part of Louisiana, and the only doubtful points are as to the jurisdiction over Cat island and the islands called *Malheureux*, lying at the entrance of Lake Borgne.

Although under the organic act Louisiana might have some claim to Cat island, it does not appear that such claim was ever made, though on a few of the maps inspected it appears as part of that State. The land surveys of Louisiana were not extended to Cat island, while those of Mississippi were so extended. There seems to have been a general consensus that the passage called Cat Island channel divides the jurisdiction of the two States.

With regard to the *Malheureux* islands, which are situated at the entrance to Lake Borgne, between point *Malheureux* and Lower Point Clear, there seems to be more uncertainty. These small marshy islands, which on many of the ordinary maps are either not shown at all or else very incorrectly represented, seem to have been considered by the map makers as of too little importance to receive any careful consideration. In fact, at least one case is found in which two editions of the same map issued by the State of Louisiana vary the ownership of these and other islands.

As shown on the Coast Survey chart, from a survey made in May, 1852, there are four of these islands, viz: *Grassy*, *Grand*, *Round* and *Petit Pass* islands, St. Joseph's island, east of Point Clear, Mississippi, being considered as not one of this group and as undoubtedly in Mississippi, by nearly constant usage if not by prescription.

All of the above islands would be included within Louisiana's three-league limit of 1812 and also within Mississippi's six league limit of 1817. It is to be presumed that a later grant would not be held to include islands already granted by an earlier enactment.

The American Atlas, of H. S. Tanner, published at Philadelphia, in 1820, and generally esteemed the best authority of the day, shows the States of Mississippi and Louisiana in conjunction on plate 20.

This map is clearly and neatly drawn and is colored by counties,

(or parishes in Louisiana). The southeastern shore of Lake Borgne is not correctly drawn and Petit island is not shown separately. The Malheureux islands are, however, shown and are colored as part of St. Tammany parish, Louisiana. Cat island is shown as part of Hancock county, and Ship and Horn islands as belonging to Jackson county, Mississippi. All islands south west of Cat islands are shown as in Plaquemines, (now St. Bernard) parish, Louisiana.

About 1827 the U. S. land survey was extended to the southwestern part of Mississippi and the marshy point east of the Pearl river was surveyed as township 10 S. range 15 W. and was subdivided into sections. Two small portions of the eastern shore of Point Clear extended into sections 6 & 7 of township 10 S. R. 14 W., and St. Joseph's island, still farther to the eastward, was located by a course and distance from a point on the main shore. The northern point of Grand island was also located by two courses and distances taken from Lower Point Clear and from the south point of St. Joseph's island. Grand island was not subdivided on the rectangular system, but seems to have been surveyed in some way, as the area is given on the plat as equal to 1612 acres. Its outline, however, is very incorrectly given. It falls in the extreme S. E. corner of twp. 10 S. R. 15 W. and small portions of it extend into each of the adjoining townships, viz: T. 10 S. R. 14 W.; T. 11 S. R. 14 W.; and T. 11 S. R. 15 W. As above stated, it was not subdivided and none of the sections within which it would fall are entered on the transfer 1111 books of the General Land Office.

Grassy or Marsh island, which is about three quarters of a mile W. N. W. from Grand island, is not shown on this Mississippi plat, nor are Round and Petit Pass islands.

In the years 1843 and 1845 the land surveys in the southeastern district of Louisiana were extended to the broken marshy region east of Lake Borgne, and all four of the Malheureux islands were included in the survey and were subdivided by the rectangular system upon the plats, the original surveys being by meanders proceeding from Point Malheureux to Petit Pass island and from there to Round, Half Moon (Grand) and Marsh (Grassy) islands, in the order named.

It will be noted that the names of the islands in the Louisiana survey differ from those now in use. In this survey, also, the islands fall in four townships, viz: T. 10 S. R. 17 E.; T. 11 S. R. 17 E.; T. 10 S. R. 18 E.; and T. 11 S. R. 18 E. This was evidently a careful survey, the outlines of the islands upon the plat agreeing very closely with the topographical survey of 1852.

Under the marsh-land act of March 2, 1849, the State of Louisiana selected all of the above islands as marsh land and the release of the same to the State was approved by the Secretary of the Interior on May 6, 1852. This release had the force of a patent and would seem to settle the ownership of these islands as being in the State of Louisiana. Presumably, jurisdiction would go with ownership, especially as no question seems to have been raised. Yet the evidence of the maps is most conflicting. The earliest maps of

Louisiana after the cession represent the Malheureux islands as not belonging to Louisiana. A large and elaborate map of the Territory of Orleans and of western Florida, (then Spanish), with part of the Territory of Mississippi, made by B. Lafon and published at New Orleans in 1806, gives the islands to western Florida, and the latest official maps issued by the State of Louisiana similarly indicate them as part of Mississippi. Of the large number of maps examined I have notes of seventy-three which show these islands more or less distinctly.

1112 Twenty-six of these do not indicate in any definite way the State to which the islands belong; twenty-six put the whole group in Louisiana; seventeen put them in Mississippi; and three divide the group by putting Grassy and Grand islands in Mississippi and Round and Petit Pass islands in Louisiana. An official map of the State of Mississippi by T. S. Hardee, published in 1872 even puts St. Joseph's island in Louisiana. Nine maps put Cat island in Louisiana, but twenty-six put it in Mississippi. All of this shows that the average publisher's map carries very little weight, the possibility being that one is copied from another without discrimination. Great carelessness is frequently shown in the coloring which is the usual mark of distinction between the political subdivisions. Different copies of the same map show the islands colored differently. Comparing the various authorities, it would appear that the earlier map makers generally considered the islands as belonging to the north shore of the lake, probably on account of the wide passage which they showed to the southward in place of the very narrow "Petit pass" as it actually existed. It would also appear that most of the maps issued by the governments of the two States have continued in that view; but the maps of the General Land Office are consistent in showing these islands in Louisiana, and most recent maps and atlases follow them.

Considering that the Malheureux islands lie within the three leagues from the coast of Louisiana mentioned in the organic act of 1812, and that the General Government relinquished title to the State of Louisiana in 1852, it would seem necessary to consider that Louisiana has at least a *prima facie* claim. It is also worth noticing that the principal channel into Lake Borgne lies to the northward of the islands between them and Lower Point Clear.

From all the information at hand, therefore, it would appear that the boundary between the States probably takes the course indicated on the final tracing, *i. e.*, north of the Malheureux islands, and thence through the Cat Island channel to the gulf of Mexico.

Respectfully submitted,
(Signed)

W. C. HODGKINS,
Assistant, C. & G. Survey.

- 1113 List of Charts Examined on Which the Jurisdiction of the Islands is Indeterminate.
- 1820 Tardieu. Paris.
- 1829 David H. Burr. Islands not colored.
- 1832 Hinton. Very small and indefinite.
- 1833 Tanner. Same as foregoing.
- 1837 E. Gilman. Fair scale but indefinite.
- 1839 Official chart of the sea coast of Mississippi. John Wheeler engineer.
- 1841 U. S. Land Office, Jackson, Miss. Diagram of survey shows no islands at all.
- 1845 Meyer's Hand Atlas. (German.)
- 1849 Land Office map.
- 186- Military map of the department of Louisiana.
- 186- Colton's map of Louisiana.
- 1863 Colton's map of Mississippi.
- 1866 Schönberg & Co.
- 1866 Land Office sketch of Mississippi. Shows no work on island.
- 1868 T. S. Hardee's official map of Mississippi. Does not color C. island.
- 1868 Adolf Stieler's Hand Atlas.
- 1868 Keith Johnston's Royal Atlas.
- 1868 Asher and Adams Atlas and Gazetteer of the U. S.
- 1879 Hinman's Eclectic Geography, (map of Mississippi).
- 1885 Bradley's Atlas of the World, Philadelphia.
- 1889 Rand McNally & Co.'s sectional map of Mississippi, (shows islands not colored).
- 1890 Mast, Crowell & Kirkpatrick, cheap maps of Louisiana and Mississippi.
- 1890 Black's General Atlas.
- 1897 } U. S. post route maps of Louisiana and Mississippi.
- 1898 }
- 1899 }
- 1898 Rand McNally & Co.'s R. R. map of Mississippi.
- 1899 G. F. Cram. Rough map.
- 1114 List of Charts Examined which Represent the Malheureux Islands as in Mississippi.
- 1806 B. Lafon. Large map, (to Florida).
- 1816 Wm. Darby. New Orleans. (Whole of Malheureux island).
- 1820 John Me'ish's map of Louisiana, puts Malheureux and island to the east in Mississippi.
- 1834 Graham and Tanner, Philadelphia. Large. Colored.
- 1837 H. S. Tanner. Same as last.
- 1838 Gwin and Dougherty. Philadelphia. Not very definite.

- 1839 John La Tourrette, Mobile. (Grand and Grassy to Mississippi.)
- 1842 S. E. Morse and S. Breese. Map of Mississippi.
- 1853 John La Tourrette, New Orleans. Same as his 1839 map.
- 1853 G. W. R. Bayley, C. E., New Orleans.
- 1870 Dr. F. V. Hopkins. Preliminary geological map of Louisiana. Published by Colton's, N. Y.
- 1871 Colton's map of Louisiana (Grand and Grassy islands in Mississippi).
- 1871 T. S. Hardee's official State map of Louisiana (including even Petit Pass island).
- 1871 T. S. Hardee. Another copy of same puts Petit Pass island in Louisiana.
- 1877 Colton's map of Louisiana.
- 1877 T. S. Hardee's map of SE. part of Louisiana.
- 1881 Political map of Louisiana, issued by State bureau of immigration and agriculture (claims Grassy and Grand islands).
- 1892 Official map of Mississippi. Bureau of immigration and agriculture, (Rand McNally). Same as last but much smaller.)
- 1895 The Matthews-Northrup "Up to date map of Mississippi," Buffalo, N. Y.
- 1115 List of Maps which Represent the Malheureux Islands as in Louisiana.
- 1818 M. Ludlow's map. About the same as Melish's.
- 1820 John Melish's map of Mississippi. Does not color islands but apparently puts Malheureux islands in Louisiana.
- 1820 H. S. Tanner's American Atlas.
- 1820 John Melish's map of Louisiana (differs from his map of Mississippi) (see Mississippi list).
- 1834 Mitchell. Philadelphia. (Malheureux islands in St. Tammany parish.)
- 1839 D. H. Burr. Top. to N. O. and geogr. to H. R.
- 1839 John La Tourrette, Mobile. (Petit pass and Round island to Louisiana.)
- 1842 S. E. Morse and S. Breese. Map of Louisiana.
- 1853 John La Tourrette, same as 1839 map.
- 1857 Land Office sketch of Louisiana surveys.
- 1868 T. S. Hardee's official map of Mississippi.
- 1872 T. S. Hardee's colored map of Mississippi, reduced from the last, puts Malheureux islands in Louisiana and also St. Joseph's island.
- 1872 Louisiana State University map of Louisiana, by Prof. S. H. Lockett.
- 1873 Colton's map of Mississippi.
- 1876 Land Office map of Louisiana.
- 1878 Frank A. Gray's new map of Louisiana. Philadelphia.

- 1878. Frank A. Gray's new map of Mississippi. Philadelphia.
- 1879. General Land Office map of Louisiana.
- 1881. Topographic map of Louisiana by La. bureau of agriculture and immigration.
- 1882. Official map of Mississippi, by State bureau of immigration and agriculture (gives Round and Petit Pass islands to Louisiana).
- 1884. Map for Gayarre's History of Louisiana. Same as topographic map of 1881.
- 1885. R. Hinman. Map of Louisiana, in Eclectic Geography.
- 1887. General Land Office map of Louisiana.
- 1890. General Land Office. Township map of Mississippi.
- 1893. Rand McNally. Small map.
- 1896. General Land Office map of Louisiana.
- 1897. Century Atlas.
- John Bartholomew's Library Reference Atlas, Lond. & N. Y. 1890.
- Rand McNally & Co.'s Atlas of the World, Chicago, 1898.
- Light House Board map of 8th Light House district.

(Endorsed:) Document No. 11. Offered by State of Louisiana. April 13, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar 13, 1905. James H. McKenney, clerk.

(Here follow three maps, marked pp. 1116, 1117 and 1118.)



SKETCH No. 1

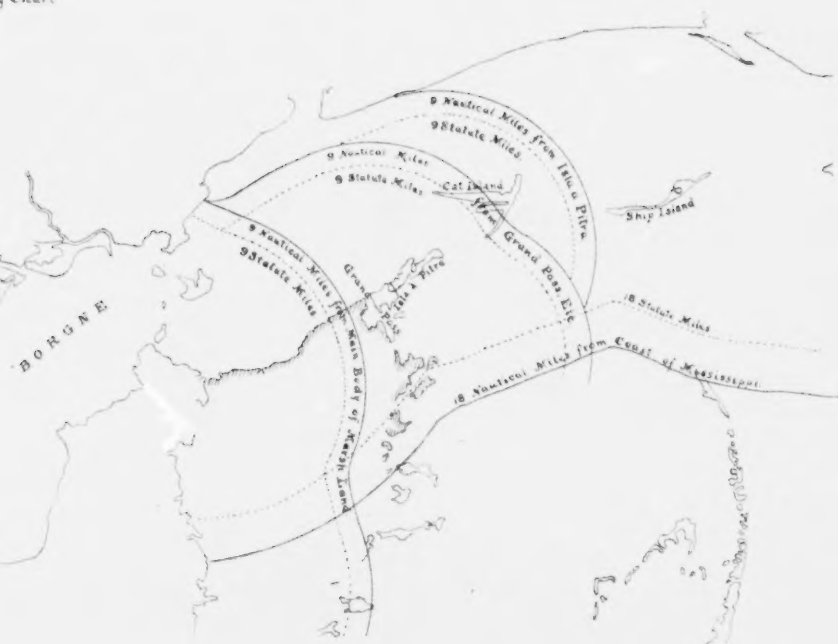
Shows part of original boundary of
Louisiana from the Atchafalaya River to
Lake Borgne based on Court and
Geological Survey Court of 1850. Scale
1:100,000



Sketch No. 2.
Showing limits of grants of islands ba
on Coast and Geologic Survey, Cha
No. 19, Scale 1:100,000



as Based
y Chart





FOLD OUT IS TOO LARGE TO BE FILMED

1119

DOCUMENT No. 12.

UNITED STATES OF AMERICA, }
Library of Congress. }

To all to whom these presents come, Greeting :

I certify that the fifteen maps described on the attached list and forwarded herewith to the Howard Memorial library at New Orleans to be offered in evidence in the suit referred to below, are a portion of the collection in the Division of Maps and Charts in the Library of Congress; that on or about the fourth day of March, A. D. one thousand nine hundred and four, Mr. Alexander Porter Morse, understood to be counsel for the State of Louisiana, in the matter of an original suit in the Supreme Court of the United States, entitled "The State of Louisiana *vs.* The State of Mississippi," now pending in said court, requested the privilege of having photographs taken of such maps; that this request was granted, and that on certain days subsequent to the above date these maps were delivered to Levin C. Handy, a photographer representing the said Morse, in order that he might photograph them in a room within the Library building designated for that purpose; and that on certain days thereafter the same maps were delivered to one Louis P. Spinner, who stated that he desired to color according to the originals, prints made from the negatives thus taken by said photographer.

In testimony whereof I, Herbert Putnam, Librarian of the Library of Congress, have hereunto subscribed my name.

HERBERT PUTNAM.

Done at the city of Washington this 31st day of March, A. D. 1904, and of the Independence of the United States of America, the one hundred and twenty-eighth.

Witness :

ALLEN R. BOYD.

1120

From the Maps & Charts Division.

To the Librarian of Congress :

Referring to La. and Miss. Maps Used by Mr. Morse. March 30, 1904.

The maps in the following list numbered from 1-15 are the maps examined by Mr. Morse, and photographed at his request by Mr. Handy. The same maps were used by Mr. Spinner for the purpose of reproducing their coloring upon certain photographs in his possession.

1. Lafon. Carte generale de territoire d'Orleans. (1806)
2. Darby. A map of the State of Louisiana, 1816.

3. Ludlow. A map of the State of Louisiana with part of the State of Mississippi and Alabama territory. (1819-1820)
4. Melish. Map of Louisiana, (1820)
5. Tanner, Louisiana and Mississippi. 1820.
6. Mitchell. Map of Louisiana, Mississippi and Alabama, 1834
7. Graham and Tanner. A map of the State of Louisiana with its counties, parishes &c., including the central & southern portions of the State of Mississippi 1834.
8. Tanner. A map of the State of Louisiana with its counties parishes, &c., including the central & southern portions of the State of Mississippi. 1837.
9. La Tourette. An accurate map or delineation of the State of Mississippi with a large portion of Louisiana and Alabama. 1839
10. Bayley. New and improved map of Louisiana, 1853.
11. Schonberg. Map of Louisiana. 1866.
12. Hardee. Geographical, historical and statistical official map of Louisiana. 1871.
13. Gray. New map of Louisiana. 1878.
14. Wall. Official map of the State of Mississippi. 1882.
15. Hinman. Map of Louisiana. 1885.

P. LEE PHILLIPS,
Chief of Maps and Charts Division.

Endorsed: Document No. 12. Offered by State of Louisiana Apr. 20, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1121

DOCUMENT No. 13.

American History Leaflets of September 10, 1892, No. 5.

The definite treaty of friendship and peace between His Britannic Majesty and the Most Christian King and the King of Spain, concluded at Paris the tenth day of February, 1716, in which the King of Portugal acceded on the same day. * * *

Article VII.

In order to establish peace upon solid and durable foundation and to remove forever all subjects of dispute with regard to the limits of the British and French territories on the continent of America; that for the future the confines between the dominions of His Britannic Majesty and those of His Most Christian Majesty, in that part of the world shall be fixed irrevocably by a line drawn along the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain to the sea; and for this purpose His Most Christian Majesty cedes in full right and guarantee to His

Britan-ic Majesty the river and the port of Mobile, and everything which he possesses or ought to possess on the left side of the River Mississippi except the town of New Orleans and the island on which it is situated shall remain to France, provided; that the River Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its whole breadth and length from its source to the sea, and expressly that part which is between the said island of Orleans and the right bank of that river, as well as the passage both in and out of its mouth.

It is further stipulated that the vessels belonging to the subjects of either nation, shall not be stopped or subjected to the payment of any duty whatsoever. The stipulations inserted in the fourth article in favor of the inhabitants of Canada, shall also take place with regard to the inhabitants of the country ceded by this article.

Recueil de trites, etc., par Geo. Fred de Martens, tome 1, page 110.

1122 Endorsed: Treaty between England France and Spain
Feb'y 10th 1716. Art. VII. Translation appearing in "American History Leaflets" of Sept. 10th 1892. No. 5. Document No. 13 offered by State of Louisiana. Apr. 25, 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1123 DOCUMENT NO. 14.

Treaties and Conventions Concluded between the United States of America and Other Powers Since July the 4th, 1776.

Washington, 1889.

Page 1381, under the Head of Spain.

Translation from Recueil de Trites, etc., par Geo. Fred de Martens.

Tome 1, Page 110.

Article VI (VII).

It is agreed that in the future the boundaries between His Britan-ic Majesty and those of His Most Christian Majesty in that part of the world, shall be irrevocably fixed by a line drawn in the middle of the Mississippi river from its source to the Iberville river, and thence by a line drawn in the middle of the latter river and Lakes Maurepas and Pontchartrain to the sea; and to this end the Most Christian King cedes in absolute ownership and guarantee to His Britan-ic Majesty, the river and port of Mobile and all that he possesses or ought to possess on the left bank of the Mississippi river

with the exception of New Orleans and of the island on which it situated which shall continue to belong to France.

It is understood that the navigation of the Mississippi river shall be equally free to the subjects of Great Britain and those of France throughout its breadth and length from its source to the sea, and especially that part which is between that island and the right bank of the river, both at its entrance and at its outlet through its mouth.

Endorsed: Treaty between England France and Spain February 10th 1716. Art. VI. (VII) Translation as appearing in "Treaties and Conventions between the United States and Other Powers Since July 4th 1776" Washington 1889. Document No. 14. Offered by the State of Louisiana April 25, 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13, 1904. James H. McKenney clerk.

1124

DOCUMENT NO. 15.

Treaty of Peace, &c., between the Kings of France, Spain, and England, Signed at Paris on 10th of February, 1763.

Article VII or VI.

In order to re-establish peace on solid and durable foundation and to remove forever all motives for dispute respecting the limits of the French and British territories on the American continent, has been agreed that the limits between the States of His Most Christian Majesty and those of His Britannic Majesty in that part of the world, shall hereafter be irrevocably fixed by a line drawn along the middle of the River Mississippi from its source to the River Iberville; and thence by another line through the middle of the river and the Lakes Maurepas and Pontchartrain to the sea; and for this purpose the Most Christian King cedes to His Britannic Majesty, and guarantees to him, the entire possession of the river and port of Mobile, and all that he possesses or should have possessed, on the left bank of the River Mississippi, with the exception of New Orleans and the island whereon that city stands, which are to remain subject to France; it being understood that the navigation of the Mississippi river is to be equally free to the subjects of Great Britain and of France in its whole breadth and extent, from its source to the sea, and particularly that part between the said Island of New Orleans and the right bank of that river, as well as the entrance and departure by its mouth. It is moreover stipulated, that vessels belonging to the subjects of either nation are not to be detained, searched, or obliged to pay any duties whatsoever. The stipulations contained in the fourth article in favor of the inhabitants of Canada are to be of equal effect with regard to the inhabitants of the countries ceded by this article.

Land Law in California, Oregon, Texas &c., by Joseph M. White—1839—vol. 2, page 533.

Endorsed: Treaty between France, Spain and England—10th of February 1763. Art. VII or VI. From Land Law in California, Oregon, Texas &c. by Jos. M. White, vol. 2, page 533. Document No. 15. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney clerk.

1125

DOCUMENT No. 16.

Extracts from the Revised Statutes of the United States.

Forty-third Congress, 1st Session, 1873-74.

Page- 704 & 705.

Treaty of Friendship, Limits, and Navigation between the United States of America and the King of Spain, Oct. 27, 1795.

"His Catholic Majesty and the United States of America, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to establish, by a convention, several points, the settlement whereof will be productive of general advantage and reciprocal utility to both nations.

With this intention, His Catholic Majesty has appointed the most excellent Lord Don Manuel de Godoy, and Alvarez de Faria, Rios, Sanchez, Zazosa, Prince de la Paz, Duke de la Alcudia, Lord of the Soto de Roma, and of the State of Albala, grandee of Spain of the first class, etc., * * * and the President of the United States with the advice and consent of their Senate has appointed Thomas Pinckney, a citizen of the United States and their envoy extraordinary to His Catholic Majesty. And the said plenipotentiaries have agreed upon and concluded the following articles:

Article I.

"There shall be a firm and inviolable peace and sincere friendship between His Catholic Majesty, his successors and subjects, and the United States and their citizens, without exception of persons or places."

Article II.

"To prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit: The southern boundary of the United States, which divides their territory from the Spanish colonies of east and west Florida, shall be designated by a line beginning on the River Mississippi, at the northernmost part of

1126 the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the

River Apalachicola, or Catahouche, thence along the middle thereof to its junction with the Flint; thence straight to the head of St. Mary's river, and thence down the middle thereof to the Atlantic ocean. And it is agreed that if there should be any troops, garrisons or settlements of either party in the territory of the other, according to the above-mentioned boundaries, they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty, or sooner if it be possible; and that they shall be permitted to take with them all the goods and effects which they possess."

* * * * *

Article IV.

"It is likewise agreed that the western boundary of the United States which separates them from the Spanish colony of Louisiana is in the middle of the channel or bed of the River Mississippi, from the northern boundary of the said State to the completion of the thirty-first degree of latitude north of the equator. And His Catholic Majesty has likewise agreed that the navigation of the said river in its whole breadth from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention."

Endorsed: Treaty. Between the United States and Spain—October 27th 1795. Revised Statutes of the U. S. 43d Congress—1st session 1873-'74 pages 7044-'5. Document No. 16. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1127

DOCUMENT No. 17.

Extracts from the Revised Statutes of the United States.

Forty-third Congress, 1st Session.

1873-'74.

Page 232 & 233.

Treaty between the United States of America and the French Republic, April 30, 1803.

Article I.

"Whereas by the article the third of the treaty concluded at St. Idelfonso, the 9th Vendemiaire, an- 9 (1st October 1800,) between the first consul of the French Republic and His Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages o

his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States." And whereas in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: the first consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with His Catholic Majesty."

Article II.

"In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. The archives, papers and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them."

* * * * *

Endorsed: Treaty between the United States and France. April 30th 1803. Revised Statutes of the U. S. 43d Congress, 1st session 1873-74. Pages 232 & 233. Document No. 17 offered by the State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1129

DOCUMENT No. 18.

U. S. Statutes at Large.

Chapter 28, vol. 1, page 549.

An Act for an Amicable Settlement of the Limits with the State of Georgia and Authorizing the Establishment of a Government in the Mississippi Territory.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

the President of the United States be, and he hereby is authorized to appoint three commissioners: any two of whom shall have power to adjust and determine with such commissioners as may be appointed under the legislative authority of the State of Georgia interfering claims of the United States and that State to territory situate west of the River Chatahouchee north of the thirty-first degree of north latitude and south of the cession made to the United States by South Carolina; and also to receive proposals for the relinquishment or cession of the whole or any part of the other territory claimed by the State of Georgia and out of the ordinary jurisdiction thereof.

SEC. 2. Be it further enacted, That all the lands thus ascertained as the property of the United States shall be disposed of in such manner as shall be hereafter directed by law; and the net proceeds thereof shall be applied to the sinking and discharging the public debts of the United States in the same manner as the proceeds of the other public lands in the territory north-west of the River Ohio.

SEC. 3. Be it further enacted, That all that tract of country bounded on the west by the River Mississippi; on the north by a line drawn due east from the mouth of the Yassous to the Chatahouchee river and on the south by the thirty first degree of north latitude, shall be, and hereby is, constituted one district to be called the Mississippi territory; and the President of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the territory north-west of the Ohio river excepting and excluding the last article of the ordinance made for the government thereof by the late Congress on the 13th day of July one thousand seven hundred and eighty-seven and by and with the advise and consent of the Senate, to appoint all the necessary officers therein, who shall respectively receive the same compensation for their services; to be paid in the same manner as by law established for similar officers in the territory north-west of the River Ohio; and the powers, duties and emoluments of the superintendent of Indian affairs for the southern department shall be united with those of the governor; *Provided always* That if the President of the United States shall find it most expedient to establish this government in the recess of Congress, he shall nevertheless have full power to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the Congress next ensuing the establishment of the government.

SEC. 4. Be it further enacted, That the territory hereby constituted one district for the purpose of government may, at the discretion of Congress be hereafter divided into two districts with separate territorial governments in each similar to that established by this act.

SEC. 5. Be it further enacted, That the establishment of this government shall in no respect impair the right of the State of Georgia or of any person, either to the jurisdiction or the soil of the said territory; but the rights and claims of the said State and of all

persons interested are hereby declared to be as firm and available as if this act had never been made.

Approved April 7, 1798.

Endorsed: Act of Congress. For an amicable settlement of the limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi territory. Approved April 7th 1798. U. S. Statutes at Large. Chapter 28, vol. 1, page 549 Document No. 18 offered by State of Louisiana April 25, 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1131

DOCUMENT NO. 19.

Extracts from the Annals of Congress.

Fifth Congress, 2nd Session. Appendix 1804 and 1805.

Description of Louisiana.

(Communicated to Congress Nov. 14, 1803.)

To the Senate and House of Representatives of the United States.

Page 1498.

I now communicate a digest of the information I have received relative to Louisiana, which may be useful to the legislature in providing for the government of the country. A translation of the most important laws in force in that province, now in the press, shall be the subject of a supplementary communication, with such further and material information as may yet come to hand.

TH. JEFFERSON.

November 14, 1803.

An Account of Louisiana.

Page 1498.

The object of the following pages is to consolidate the information respecting the present State of Louisiana, furnished to the Executive by several individuals among the best informed on the subject.

Of the province of Louisiana no general map, sufficiently correct to be depended upon, has been published, nor has any been yet procured from a private source. It is, indeed probable that surveys have never been made upon so extensive a scale as to afford the means of laying down the various regions of a country which in some of its parts, appears to have been but imperfectly explored.

Page 1504.

St. Bernardo.

On the east side of the Mississippi, about five leagues below New Orleans, and at the head of the English bend, is a settlement known by the name of the Poblacion de St. Bernardo, or the Terre au Bœufs extending on both sides of a creek or drain, whose head is contiguous to the Mississippi, and which flowing eastward, 1132 after a course of eighteen leagues, and dividing itself into two branches, falls into the sea and Lake Borgne. This settlement consists of two parishes, almost all the inhabitants of which are Spaniards from the Canaries, who content themselves with raising fowls, corn and garden stuff for the market at New Orleans. The lands can not be cultivated to any great distance from the banks of the creek, on account of the vicinity of the marsh behind them, but the place is susceptible of great improvement, and of affording another communication to small craft of from eight to ten feet draught, between the sea and the Mississippi.

Page 1505.

Country from Plaquemines to the Sea, and Effect of the Hurricanes.

From Plaquemines to the sea is twelve or thirteen leagues. The country is low, swampy, chiefly covered with reeds, and having little or no timber, and no settlement whatever. It may be necessary to mention here, that the whole lower part of the country, from the English Turn downwards, is subject to overflowing in hurricanes, either by the recoiling of the river, or reflux from the sea on each side; and, on more than one occasion, it has been covered from the depth of two to ten feet, according to the descent of the river, whereby many lives were lost, horses and cattle swept away, and a scene of destruction laid. The last calamity of this kind happened in 1794, but fortunately they are not frequent. In the preceding year the engineer who superintended the erection of the fort at Plaquemines was drowned in his house near the fort, and the workmen and garrison escaped only by taking refuge on an elevated spot in the fort, on which there were notwithstanding two or three feet of water. These hurricanes have generally been felt in the month of August. Their greatest fury lasts about twelve hours. They commence in the southeast, veer about to all the points of the compass, are felt most severely below, and seldom extend more than a few leagues 1133 above New Orleans. In their whole course they are marked with ruin and desolation. Until that of 1793, there had been none felt from the year 1780.

Page 1574.

San Bernardo, or Terre au Bœufs, on a Creek Running from English Turn, East to the Sea and Lake Borgne.

Endorsed : Description of Louisiana, Message of Thos. Jefferson. Extracts from Annals of Congress, 8th Congress—2d session. Appendix 1804 & 1805. Document No. 19. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S., Filed Mar. 13, 1905. James H. McKenney, clerk.

1134

DOCUMENT No. 20.

United States Statutes at Large.

Chapter 38, Vol. 2, Page 283.

An Act Erecting Louisiana into Two Territories and Providing for the Temporary Government Thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the country ceded by France to the United States under the name of Louisiana which lies south of the Mississippi territory and of an east and west line to commence on the Mississippi river at the thirty third degree of north latitude, and to extend west to the western boundary of said cession, shall constitute a territory of the United States under the name of the Territory of Orleans; the government whereof shall be organized and administered as follows :

* * * * *

SEC. 12. The residue of the province of Louisiana ceded to the United States shall be called the district of Louisiana, the government whereof shall be organized and administered as follows :

* * * * *

Approved March 26, 1804.

Endorsed : Act of Congress erecting Louisiana into two territories and providing for the temporary government thereof. Approved March 26th 1804. U. S. Statutes at Large chapter 38, vol. 2, page 283. Document No. 20. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

An act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of such State into the Union on an equal footing with the original States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of the said river, including all islands, to the thirty second degree of latitude, thence due north to the northernmost part of the thirty third degree of north latitude, thence along the said parallel of latitude to the River Mississippi, thence down the said river to the River Iberville, and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico, thence, bounded by the said Gulf, to the place of beginning, including all islands within three leagues of the coast, be, and they are hereby authorized to form themselves a constitution and State government, and to assume such name as they may deem proper, under the provisions and upon the conditions hereinafter mentioned.

SECT. 2. And be it further enacted, That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said Territory at least one year previous to the day of election, and shall have paid a territorial, county or district, or parish tax, and all persons having in other respects all legal qualifications to vote for representatives in the General Assembly of the said Territory, be, and they are hereby authorized to choose representatives to form a constitutional convention, 1136 who shall be apportioned amongst the several counties, districts, or parishes, in the said Territory of Orleans, in such manner as the legislature of the said Territory shall by law direct. The number of representatives shall not exceed sixty, and the election for the representatives aforesaid shall take place on the third Monday of September next, and shall be conducted in the same manner as is now provided by the laws of the said Territory for electing members of the house of representatives.

SECT. 3. Be it further enacted, That the members of the convention when duly elected, be, and they are hereby authorized to meet at

the city of New Orleans on the first Monday of November next, which convention, when met, shall first determine by a majority of the whole number elected, whether it be expedient or not at that time to form a constitution and State government for the people within the said Territory; and if it be determined to be expedient, then the convention shall in like manner declare, in behalf of the people of the said Territory, that it adopts the Constitution of the United States; whereupon the said convention shall be, and hereby is authorized to form a constitution of the said Territory; *provided*: that the constitution to be formed in virtue of the authority herein being given, shall be republican and consistent with the Constitution of the United States, that it shall contain the fundamental principles of civil and religious liberty, that it shall secure to the citizens the trial by jury in all criminal cases, and the privilege of the writ of *habeas corpus*, conformably to the provisions of the Constitution of the United States; and that, after the admission of the said Territory of Orleans as a State into the Union, that the laws which such State may pass, shall be promulgated, and its records of every description shall be preserved, and its judicial and legislative written proceedings, conducted in the language in which the laws and the judicial and legislative proceedings of the United States are now published and conducted; *and provided also*: That the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said Territory, do agree and declare, that they forever disclaim all right or title to the waste and unappropriated lands lying within the said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land sold by the Congress shall be and remain exempt from any tax laid by the order, or under the authority of the State, whether for State, county, township, parish or any other purpose whatever, for the term of five years from and after the respective days of sales thereof; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States; and that the River Mississippi and the navigable rivers and waters leading into the same, or into the gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State, as to other citizens of the United States, without any tax, duty, import or toll therefor imposed by the said State.

Sec. 4. Be it further enacted, That in case the convention shall declare its assent, in behalf of the people of the said Territory, to the adoption of the Constitution of the United States, and shall form a constitution and State government for the people of the said Territory of Orleans, the said convention, as soon thereafter as may be, is hereby required to cause to be transmitted to Congress the instrument by which its assent to the Constitution of the United States is

thus given and declared, and also a true and attested copy of such constitution and form of the State government as shall be formed and provided by the said convention; and if the same shall not be disapproved by Congress at their next session after the receipt thereof, the said State shall be admitted into the Union upon the same footing with the original States.

SEC. 5. And be it further enacted, That five per centum of the proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees in the said State, as the legislature thereof may direct."

Approved February 20th 1811."

1138 Endorsed: Act of Congress to enable the people of the Territory of Orleans to form a constitution and State government. Approved Feb'y 20th 1811. U. S. Statutes at Large. Vol. 2, page 641. Document No. 21 offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1139

DOCUMENT NO. 22.

U. S. Statutes at Large.

Vol. 3, Page 472.

An act concerning an act to enable the President of the United States under certain contingencies to take possession of the country lying east of the Perdido and south of the State of Georgia and the Mississippi territory, and for other purposes, and the declaration accompanying the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act, and the act passed during the present session of Congress entitled "An act to enable the President of the United States under certain contingencies to take possession of the country lying east of the River Perdido and south of the State of Georgia and the Mississippi territory, and for other purposes" be not printed or published until the end of the next session of Congress, unless directed by the President of the United States any law or usage to the contrary notwithstanding.

Approved March 3. 1811

Endorsed: Act of Congress concerning an act to enable the President of the U. S. under certain contingencies to take possession of the country lying east of the Perdido. Approved March 3d, 1811. U. S. Statutes at Large, vol. 3, page 472. Document No. 22 offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1140

DOCUMENT No. 23.

U. S. Statutes at Large.

Vol. 3, Page 471.

An act to enable the President of the United States under certain contingencies to take possession of the country lying east of the River Perdido and south of the State of Georgia and the Mississippi territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized to take possession of and occupy all or any part of the territory lying east of the River Perdido and south of the State of Georgia and the Mississippi territory, in case an arrangement has been made or shall be made with the local authorities of the said territory for delivering up the possession of the same, or any part thereof to the United States, or in the event of an attempt to occupy the said territory or any part thereof by any foreign government; and he may for the purpose of taking possession and occupying the territory aforesaid, and in order to maintain therein the authority of the United States, employ any part of the Army and Navy of the United States which he may deem necessary.

SEC. 2. Be it further enacted, That one hundred thousand dollars be appropriated for defraying such expenses as the President may deem necessary for obtaining possession as aforesaid, and the security of the said territory, to be applied under the direction of the President out of any money in the Treasury not otherwise appropriated.

SEC. 3. Be it further enacted, That in case possession of the territory aforesaid shall be obtained by the United States as aforesaid, that until other provision is made by Congress, the President be, and he is hereby authorized to establish within the territory aforesaid a temporary government, and the military, civil and judicial powers thereof shall be vested in such person or persons and be exercised in such manner as he may direct for the protection and maintenance of the inhabitants of the said territory in the full enjoyment of their liberty, property and religion.

Approved January 15, 1811.

Endorsed: Act of Congress to enable the President of the
1141 U. S. under certain contingencies to take possession of the
country lying east of the River Perdido. Approved January
15th 1811. U. S. Statutes at Large. Vol. 3, page 471. Document
No. 23 offered by State of Louisiana April 25, 1904. Frank H.
Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar.
13, 1905. James H. McKenney, clerk.

U. S. Statutes at Large.

Chapter 1, Vol. 2, Page 701.

An Act for the Admission of the State of Louisiana into the Union and to Extend the Laws of the United States to said State.

Whereas, the representatives of the people of all that part of the territory or country ceded under the name of "Louisiana" by the treaty at Paris on the thirtieth day of April one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say : Beginning at the mouth of the River Sabine ; thence by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude ; thence due north to the northernmost part of the thirty-third degree of north latitude ; thence along said parallel of latitude to the River Mississippi ; thence down the said river to the River Iberville ; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico ; thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast ; had on the twenty-second day of January one thousand eight hundred and twelve formed for themselves a constitution and State government, and given to the said State the name of Louisiana, in virtue of an act entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government ; and for the admission of the said State into the Union on an equal footing with the original States, and for other purposes," and the said constitution having been transmitted to Congress and by them being hereby approved ; therefore : Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said State shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on equal footing with the original States in all respects whatever, by the name of Louisiana ; *Provided* That it shall be taken as a condition upon which the said State is incorporated in the Union, that the River Mississippi and the navigable rivers and waters leading into the same, and
 1143 into the gulf of Mexico shall be common highways and forever free, as well to the inhabitants of the said State as to the inhabitants of other States and the Territories of the United States, without any tax, duty, impost or toll therefor imposed by the said State ; and that the above condition and also all other conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered, deemed and taken fundamental conditions and terms upon which the State is incorporated in the Union.

Sed. 3. Be it further enacted that the said State, together with the residue of that portion of the country which was comprehended within the Territory of Orleans, as constituted by the act entitled "An act erecting Louisiana into two territories and providing for the temporary government thereof," shall be one district and called the Louisiana district; and there shall be in the said district a district court to consist of one judge who shall reside therein and be called the district judge; and there shall be annually four stated sessions of the said court held at the city of New Orleans, &c.

* * * * *

Approved April 8, 1812.

Endorsed: Act of Congress for the admission of the State of Louisiana into the Union &c. Approved April 8, 1812. U. S. Statutes at Large chapter 1, vol. 2, page 701. Document No. 21, offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1144

DOCUMENT No. 25.

U. S. Statutes at Large.

Chapter 57, Vol. 2, Page 708.

An Act to Enlarge the Limits of the State of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case the legislature of the State of Louisiana shall consent thereto, all that tract of country comprehended within the following bounds, to wit: Beginning at the junction of the Iberville with the River Mississippi; thence along the middle of the Iberville, the Amite river and the Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the said eastern branch of Pearl river to the thirty first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State.

SEC. 2. And be it further enacted, That it shall be incumbent upon the legislature of the State of Louisiana, in case they consent to the incorporation of the territory aforesaid within their limits, at their first session to make provision by law for the representation of the said territory in the legislature of the State upon the principles of the constitution and for the securing to the people of the said territory equal rights, privileges, benefits and advantages with those

enjoyed by the people of the other parts of the State; which law shall be liable to revision, modification and amendment by Congress, and also in the manner provided for the amendment of the State constitution, but shall not be liable to change or amendment by the legislature of the State.

Approved April 14, 1812.

Endorsed: Act of Congress to enlarge *to* limits of the State of Louisiana, approved April 14, 1812. U. S. Statutes at Large, chapter 57, vol. 2, page 708. Document No. 25, offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1145

DOCUMENT No. 26.

State of Louisiana.

A Resolution Giving the Assent of the Legislature to an Enlargement of the State of Louisiana.

"Resolved by the senate and house of representatives of the State of Louisiana in General Assembly convened: That whereas the Senate and House of Representatives of the United States of America in Congress assemble by an act entitled, "An act to enlarge the limits of the State of Louisiana," and provided; that in case the legislature of the State of Louisiana shall consent thereto, all that tract of country comprehended within the following boundaries to wit: Beginning at the junction of the Iberville with the River Mississippi; thence along the middle of the Iberville, the River Amite, and the Lakes Maurepas and Pontchartrain, and the mouth of the Pearl river; thence up the eastern branch of the Pearl river to the thirty-first degree of latitude to the River Mississippi; thence down the said river to the place of beginning shall become and form a part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State."

Be it resolved and it is hereby resolved: That the senate and house of representatives of the State of Louisiana in General Assembly convened, do approve of, and consent to the enlargement of the limit of the said State of Louisiana, in manner as provided by the above in part recited act of Congress hereby declaring that the same shall forever be and remain a part of the State of Louisiana.

(Signed)

P. B. ST. MARTIN,

Speaker of the House of Representatives.

(Signed)

WILLIAM C. C. CLAIBORNE,

Governor of the State of Louisiana.

(Signed) J. POYDRAS,

President of the Senate.

Approved August 4, 1812.

Endorsed: State of Louisiana Resolution of legislature giving
 1146 assent to an enlargement of the State of Louisiana. Docu-
 ment No. 26. Offered by State of Louisiana April 25, 1904.
 Frank H. Mortimer, commissioner. Office Supreme Court,
 U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1147

DOCUMENT NO. 27.

U. S. Statutes at Large.

Vol. 3, Page 471.

Resolution.

Taking into view the peculiar situation of Spain and her American provinces, and considering the influence which the destiny of the territory adjoining the southern boundary of the United States may have upon their security, tranquillity and commerce; therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States, under the peculiar circumstances of the existing crisis, can not without serious inquietude see any part of the said territory pass into the hands of any foreign power; and that a due regard to their own safety compels them to provide under certain contingencies for the temporary occupation of the said territory; they at the same time declare that the said territory shall in their hands remain subject to future negotiations.

Approved January 15, 1811.

Endorsed: Resolution of Congress relating to Spanish provinces. Approved January 15th, 1811. U. S. Statutes at Large. Vol. 3, page 471. Document No. 27. Offered by State of Louisiana, April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1148

DOCUMENT NO. 28.

U. S. Statutes at Large.

Chap 67, Vol. 2, Page 713.

An Act for Ascertaining the Titles and Claims to Land in that Part of the Louisiana which Lies East of the River Mississippi and Island of New Orleans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining the titles and claims to lands in that tract of country which lies south of the Mississippi territory, east of the

River Mississippi and island of New Orleans, and west of the River Perdido and a line drawn with the general course thereof to the southern boundary of the said Mississippi territory to the land within the said limits, shall be laid off into two land districts, between which Pearl river shall be the boundary; and for each of which districts a commissioner for land claims shall be appointed by the President of the United States, with the advice and consent of the Senate. The said commissioners shall respectively have power to appoint a clerk who shall be capable of translating French and Spanish languages, and who shall, in addition, to the other duties required of him by this act, perform the duties of translator when required by the commissioner. And the said commissioner and clerk shall, before entering on the duties of their appointments, respectively take an oath or affirmation truly and faithfully to execute the duties imposed on them by this act.

SEC. 2. Be it further enacted, That for the more convenient ascertainment of the titles and claims to the lands aforesaid, it shall be the duty of each of the said commissioners respectively, and their clerks, to attend in each of the several parishes in his district, at such time and place therein as he shall appoint, for the purpose of receiving notices and evidences of titles and claims to lands within the same; and when the commissioner shall have appointed the time and place for his attendance in any parish, he shall cause public notice thereof to be given to the inhabitants of the same at least twenty days previous to the time of his commencing the business of his appointment therein.

* * * * *

Approved April 25, 1812.

1149 Endorsed: Act of Congress for ascertaining the titles and claims to lands in that part of Louisiana which lies east of the River Mississippi and the island of New Orleans. Approved April 25th, 1812. U. S. Statutes at Large. Chapter 67, vol. 2, page 713. Document No. 28. Offered by State of Louisiana April 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1150

DOCUMENT No. 29.

U. S. Statutes at Large.

Vol. 3, Page 472.

An Act Authorizing the President of the United States to Take Possession of the Tract of Country Lying South of the Mississippi Territory and West of the River Perdido.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the President be, and he is hereby authorized to occupy and hold all that tract of country called West Florida which lies west of the River Perdido, not now in the possession of the United States.

SEC. 2. And be it further enacted, That for the purpose of occupying and holding the country aforesaid, and of affording protection to the inhabitants thereof under the authority of the United States, the President may employ such parts of the military and naval forces of the United States as he may deem necessary.

SEC. 3. And be it further enacted, That for defraying the necessary expenses, twenty thousand dollars are hereby appropriated to be paid out of any money in the Treasury not otherwise appropriated, and to be applied for the purpose aforesaid under the direction of the President.

Approved February 12, 1813.

Endorsed : Act of Congress authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi Territory and west of the River Perdido. Approved Feb'y 12, 1813. U. S. Statutes at Large. Vol. 3, page 472. Document No. 29. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1151

DOCUMENT No. 30.

U. S. Statutes at Large.

Chapter 84, Vol. 2, Page 734.

An Act to Enlarge the Boundaries of the Mississippi Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory ; to be governed by the

laws now in force therein, or which may hereafter be enacted, and the laws and ordinances of the United States relative thereto, in the manner as if the same had originally formed part of the said Territory; and until otherwise provided by law, the inhabitants of said district hereby annexed to the Mississippi Territory, shall be entitled to one representative in the General Assembly thereof.

Approved May 14, 1812.

Endorsed: Act of Congress to enlarge the boundaries of the Mississippi Territory. Approved May 14, 1812. U. S. Statutes at Large, chapter 84, vol. 2, page 731. Document No. 30. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer commissioner. Offered by Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenna clerk.

1152

DOCUMENT No. 31.

U. S. Statutes at Large.

Vol. 3, Page 348, Chapter 23.

An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the western part of the Mississippi Territory be, and they are hereby authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and that said State when formed shall be admitted into the Union upon the same footing with the original States in all respects whatever.

SEC. 2. Be it further enacted, That the said State shall consist of all that territory included within the following boundaries, to wit: Beginning on the Mississippi river at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the north-west corner of the county of Washington; thence south to the gulf of Mexico; thence westward, including all islands within six leagues of the shore to the most eastern junction of the river with Lake Borgne; thence up the said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi river; thence up the same to the beginning.

SEC. 3. Be it further enacted, That all free white male citizens of the United States who shall have arrived at the age of twenty

years and resided within the said Territory at least one year previous to the time of holding the election, and shall have paid a county or territorial tax, and all persons having in other respects the qualifications to vote for representatives in the General Assembly

of the said Territory, be, and they are hereby authorized to
 1153 choose representatives to form a convention who shall be apportioned among the several counties within the Territory as follows, to wit: From the county of Warren two representatives; from the county of Claiborne four representatives; from the county of Adams eight representatives; from the county of Franklin two representatives; from the county of Wilkinson six representatives; from the county of Amite six representatives; from the county of Pike four representatives; from the county of Lawrence two representatives; from the county of Marion two representatives; from the county of Hancock two representatives; from the county of Wayne two representatives; from the county of Green two representatives; from the county of Jackson two representatives; and the election shall be holden on the first Monday and Tuesday in January next throughout the several counties above mentioned, and shall be conducted in the same manner as is provided by the laws of said Territory regulating elections therein for members of the House of Representatives.

* * * * *

Approved March 1, 1817.

Endorsed: Act of Congress to enable the people of the western part of the Mississippi Territory to form a constitution and State government &c. Approved March 1, 1817. U.S. Statutes at Large chapter 23 vol. 3, page 348. Document No. 31. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1154

DOCUMENT NO. 32.

U. S. Statutes at Large.

Vol. 3, Page 472.

Resolutions.

1. Resolution for the Admission of the State of Mississippi into the Union.

Whereas, in pursuance of an act of Congress passed on the first day of March one thousand eight hundred and seventeen entitled "An act to enable the people of the western part of the Mississippi territory to form a constitution and State government, and for the

admission of such State into the Union on an equal footing with the original States," the people of the said territory did on the fifteenth day of August in the present year, by a convention called for the purpose, form for themselves a constitution and State government, which constitution and State government so formed is republican and in conformity to the principles of the articles of compact between the original States and the people and States in the territory north-west of the River Ohio, passed on the thirteenth day of July one thousand seven hundred and eighty-seven,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Mississippi shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Approved December 10, 1817.

Endorsed: Resolution of Congress for the admission of the State of Mississippi into the Union &c. Approved December 10, 1817. U. S. Statutes at Large vol. 3, page 472. Document No. 32 offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1155

DOCUMENT NO. 33.

56TH CONGRESS, { HOUSE OF REPRESENTATIVES. { DOCUMENT
1st Session. } { No. 720.

DEPARTMENT OF THE INTERIOR.

Bulletin of the United States Geological Survey, No. 171.

Boundaries of the United States and Territories, with Outline of History of Important Changes (Second Edition). Gannett.

Washington,
Government Printing Office,
1900.

1156 * * * * *

Louisiana and the Territory Acquired from Mexico.

The Louisiana purchase was effected in 1803. In 1804 it was divided into two parts, that portion which now comprises the State of Louisiana being organized as Orleans Territory, while the balance remained as the Louisiana Territory. The State of Louisiana, comprising most of the Territory of Orleans, was admitted to the Union in 1812, and in the same year it was enlarged by the addition of

the portion lying between the Mississippi and Pearl rivers, in the southeastern part. In the same year the name of Louisiana Territory was changed to Missouri Territory. In 1819 Arkansas Territory was created, and in 1836 it was admitted as a State.

* * * * *

1157

Louisiana.

The original Territory of Louisiana was acquired from France (see p. 21). In 1804, a portion of this, comprising the area of the present State of Louisiana, with the exception of the southeastern portion immediately adjoining the present State of Florida, was organized into a territory under the name of Orleans, while the balance of the Louisiana purchase retained the name of Louisiana Territory. On April 30, 1812, the Territory of Orleans was admitted as a State under the name of Louisiana, and at the same time the name of the Territory of Louisiana was changed to Missouri Territory. In the same year the limits of the State were enlarged in the southeast to its present boundaries.

The following act defines the Territory of Orleans :

All that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a Territory of the United States, under the name of the Territory of Orleans. (Eighth Congress, first session.)

The following clause from the act admitting Louisiana defines its original boundaries :

Beginning at the mouth of the River Sabine, thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude ; thence due north to the northernmost part of the thirty-third degree of north latitude ; thence along the said parallel of latitude to the River Mississippi ; thence down the said river to the River Iberville ; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico ; thence, bounded by the said Gulf, to the place of beginning, including all islands within three leagues of the coast. (Twelfth Congress, first session.)

The following is a description of the addition to the State of Louisiana, in terms of the act :

Beginning at the junction of the Iberville with the River Mississippi, thence along the middle of the Iberville, the River Amite, and of the Lakes Maurepas and Pontchartrain, to the eastern mouth of the Pearl river ; thence up the eastern branch of Pearl river to the thirty-first degree of north latitude ; thence along the said degree of latitude to the River Mississippi ; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana. (Twelfth Congress, first session.)

The north boundary of Louisiana was surveyed by a joint commission of the State and the United States.



HISTORICAL DIAGRAM OF LOUISIANA.

* * * * *

1158

Mississippi.

(For the early history of the extent of Mississippi territory *vide* Alabama, p. 108.)

On December 10, 1817, the western part of the Mississippi territory was made a State and admitted into the Union, with the following boundaries, viz :

Beginning on the River Mississippi at the point where the southern boundary of the State of Tennessee strikes the same ; thence east along the said boundary line to the Tennessee river ; thence up the same to the mouth of Bear creek ; thence by a direct line to the northwest corner of the county of Washington ; thence due south to the gulf of Mexico ; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne ; thence up said river to the thirty-first degree of north latitude ; thence west along said degree of latitude to the Mississippi river ; thence up the same to the beginning. (*Vide* U. S. Stat. at Large, vol. III, p. 348.)

(For further information concerning eastern boundary, *vide* Alabama, p. 108.)

In 1819 the line between Mississippi and Tennessee was run by commissioners. Their report is not at hand. In 1833 the legislature of Tennessee passed an act establishing "Thompson's line." The detail of "Thompson's line" have not been found. In 1837 the line was again run by commissioners from the two States, and ratified by the legislatures. The commissioners' report was as follows, viz :

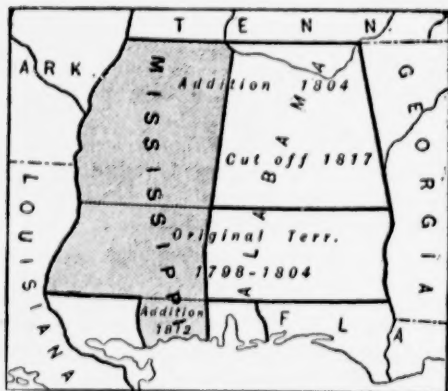
Commencing at a point on the west bank of the Tennessee river six four-pole chains south, or above the mouth of Yellow creek and about three-quarters of a mile north of the line known as "Thomp-

on's line," and twenty-six chains and ten links north of Thompson's line at the basis meridian of the Chickasaw surveys, and terminating at a point on the east bank of the Mississippi river (opposite Cow island) sixteen chains north of Thompson's line. (See Laws of Tennessee, 1837, p. 27.)

The boundaries were fixed by the act of Congress admitting the State of Mississippi as follows, viz.

Commencing at the most eastern junction of Pearl river with Lake Borgne, thence up said Pearl river to the thirty-first degree of north latitude, thence west along said degree of latitude to the Mississippi river, thence up the same to the point where the southern boundary of Tennessee strikes the same. (See U. S. Laws, vol. 6, p. 175.)

Mississippi claims to the middle of the Mississippi river, where the river forms her western boundary. (See Rev. Stat., 1857.)



HISTORICAL DIAGRAM OF MISSISSIPPI.

159 Endorsed on cover: Document No. 33. Offered by State of Louisiana April 25, 1904. "To be extracted from as shown by stenographer's notes." Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1160

DOCUMENT No. 34.

Extracts from Abridgment of Debates of Congress, by D. Apple
& Co., New York, 1857.

Vol. 4, p. 320.

Orleans Territory.

The house resolved itself into a committee of the whole on a bill for admitting the Territory of Orleans as a State into the Union.

Mr. Bibb said it was very far from his intention to oppose the passage of the bill. On the contrary, he was favorably disposed to it, but a difficulty had occurred to him, which he would state as a reason for delaying decision on the bill for the present; the bill proposed including in the State all that part of the territory which lay west of the Perdido &c. The President by his proclamation, though he had required its occupation, he declared that the right should be subject to negotiation. Now if it became a State, would not all right of negotiation on the subject be taken away from the President?

Mr. Barry said that the necessity of the State government, the want of proper control by the General Government, and its inability to attend to the municipal concerns of the territory imperiously called upon Congress to erect it into a State. * * *

Vol. 4, p. 323.

Mr. MILLER: * * * Again sir, there are objections to the bill as presented that renders it impossible for me to give it my sanction. It will be seen sir, that the bill proposes to annex that portion of West Florida in dispute between this and the Spanish government to the State to be formed out of the Territory of Orleans. The President has declared to the world, that this portion of the country in our hands shall be subject to mutual arrangements hereafter to be entered into between the two governments. But once annexed to a State, and the power to negotiate ceases. What power have we to negotiate about the territory of any State? We have none.

Again sir, I never will consent that the bay of Mobile shall be annexed to any State which includes New Orleans and the mouth of the Mississippi, unless indeed they were included in the same State with the whole country north up to the Tennessee line.

* * * * *

I therefore move sir, to strike out the whole of the bill from the words "A bill," for the purpose of inserting a section by way of amendment, the effect of which will be to consolidate both territories into a single State, which will include the whole country belonging to the United States east of the Mississippi and south of the State of Tennessee.

* * * * *

1161

Page 324.

Mr. GHOLSON: * * * In no point of view, said Mr. G., in which the subject has been considered can I perceive any reason for adopting the amendment offered by the gentleman from Tennessee (Mr. Miller). If the gentleman will advert to the treaty of cession between France and the United States, and to the act of Congress passed pursuant to that treaty, he will readily discover that the amendment he proposes cannot be sanctioned without a manifest violation of public faith. By the third article of the treaty it is stipulated that "the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all rights, advantages and immunities of citizens of the United States." On the second of March 1805 Congress proceeded by an act of legislation to fulfill this engagement with France; and accordingly by the seventh section of that act provided "that whenever it shall be ascertained by actual census or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of free inhabitants included therein shall amount to sixty thousand, they shall thereupon be authorized to form for themselves a constitution and State government, and will be admitted into the Union upon the footing of the original States in all respects whatever, conformably to the provisions of the third article of the treaty concluded at Paris on the thirtieth of April one thousand eight hundred and three between the United States and the French Republic." Now if to the Orleans Territory you add the Mississippi Territory, and of the two erect one State, you evidently will not comply either with your stipulations with the French Republic, or with your covenant to the Orleans Territory * * *

Page 324.

Mr. Bibb conceived that the House could not adopt such an amendment as that proposed, without the consent of Georgia, for without her consent they could not make an addition to or division of the Mississippi Territory. It was true, he said, that he had on a former day proposed to make an addition of territory to the Mississippi Territory, but it was only during such time as it should remain a Territory. To this there could be no objection, as there was no prohibition to it in the compact. It had been his intention, if the House had thought proper to sanction his motion, to have made a proposition to the State of Georgia to admit that territory to be incorporated with the Mississippi. The amendment now offered evidently proposed a violation of the compact with Georgia.

Page 325.

Mr. POINDEXTER: * * * That geographical limits other than those which now divide the Orleans and Mississippi Territories

might be designated to comport more with the future convenience and prosperity of the country cannot be denied. I would suggest for the reflection of the gentlemen who have to act on this subject the expediency of making the great River Mississippi the high line between the Eastern and Western States to be formed on its waters, that no one State should possess both banks of that river.

* * * * *

Mr. Miller's motion was not agreed to.

Endorsed: Extracts from Abridgment of Debates of Congress by D. Appleton & Co. New York 1857. Vol. 4 p. 320 *et seq.* Orleans Territory. Document No. 34. Offered by State of Louisiana.
1162 April 24, 1904 Frank H. Mortimer commissioner. Orleans Supreme Court U. S. Filed Mar. 13 1905. James McKenney, clerk.

1163

DOCUMENT NO. 35.

Extracts from Abridgment of Debates of Congress, by D. Appleton & Co. New York, 1857.

Vol. 3, p. 8.

Boundaries of the Province of Louisiana as Contained in a Paper Communicated by Mr. Jefferson to Congress.

The precise boundaries of Louisiana westward of the Mississippi though very extensive, are at present involved in some obscurity. The data are equally wanting to assign with precision its northern extent. From the source of the Mississippi it is bounded eastward by the middle of the channel of that river to the thirty first degree of latitude; thence it is asserted upon very strong grounds that according to its limits when formerly possessed by France, it stretched to the east as far at least as the River Perdido, which runs into the bay of Mexico eastward of the River Mobile. It may be consistent with the view of this notice to remark that Louisiana, including the Mobile settlements, was discovered and peopled by the French when monarchs made several grants of its trade, in particular to Mr. Crozat in 1712, and some years afterwards, with his acquiescence to the well known company projected by Mr. Law. This company was relinquished in the year 1781. By a secret convention on the third of November 1762, the French government ceded so much of the province as lies beyond the Mississippi, as well as the island of Orleans, to Spain; and by the treaty of peace which followed in 1763, the whole territory of France and Spain eastward of the middle of the Mississippi to the Iberville, thence through the middle of that river and the Lakes Maurepas and Pontchartrain to the sea

was ceded to Great Britain. Spain having conquered the Floridas from Great Britain during our Revolutionary war, they were confirmed to her by the treaty of peace of 1784. By the treaty of St. Ildefonso of the first of October 1800, His Catholic Majesty promises and engages on his part to cede back to the French Republic six months after the full and entire execution of the conditions and stipulations therein contained relative to the Duke of Parma "the colony and province of Louisiana with the same extent that it actually has in the hands of Spain, that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States."

This treaty was confirmed and enforced by that of Madrid of the twenty first of March 1801. From France it passed to us by the treaty of the thirtieth of April last, with a reference to the above clause as descriptive of the limits ceded.

(Endorsed :) Extract from Abridgment of Debates of Congress by D. Appleton & Co. New York. 1857. Vol. 3, p. 8. Boundaries of the province of Louisiana. Document No. 35 Offered by States of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1164

DOCUMENT No. 36.

De Bow's Review, Vol. 23, Pages 513 *et seq.*

(1857.)

List of Hurricanes on the Coast of the South Atlantic States and on the North Coast of the Gulf of Mexico.

1700, Sept. 16.—(Ramsey.) Sea rushed in upon Charleston with amazing impetuosity." Many lives lost.

* * * * *

1723.—(Burton.) A remarkable hurricane visited New Orleans this year, and nearly destroyed all the buildings.

* * * * *

1772, 31 Aug. to Sep. 3.—(Gayarre.) A destructive hurrican in the southern Louisiana, though not so great in the city of New Orleans. The sea was driven over the islands along the Gulf coast. East of Lake Borgne the wind was from the sea (E. S. E.), but further westward it blew with the greatest violence from N. N. E. and E. Towards Mobile it destroyed woodlands for thirty miles inland; and spray was driven four or five miles inland in heavy masses and showers. Mulberry trees subsequently bloomed and bore a second crop of fruit.

1778, Oct. 7 to 10.—(Galvez, Gayarre.) Cited by Gayarre as very destructive to coast establishments near New Orleans.

1779, Aug. 18.—(Gayarre.) Cited by this author as of less severity than others.

1779, Oct. 7 to 10.—(Galvez and Gayarre.) "It raged with such violence in lower Louisiana that the sea was higher than ever before, entirely destroying all establishments at the Balize, Bayou St. John and Tigouyou."

1780, Aug. 24.—(Gayarre.) This swept over the province of Louisiana, destroying all crops, tearing down buildings, and sinking every vessel or boat which was afloat on the Mississippi river. The Intendant, Navarro issued a consolatory circular to the inhabitants.

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1811.—(Dr. Burton.) Hurricane cited in Dr. Burton's report at New Orleans.

* * * * *

1812, Aug.—(Drake.) At the mouth of the Mississippi the Balize inundated, buildings washed away &c.

* * * * *

1821.—(Dr. Burton.) Cited as one of the hurricanes experienced at New Orleans.

1831, Aug. 10 to 18.—(Redfield, 1832, Berlandier.) At Barbadoes Aug. 10; 13 east of Cuba; 14 at west end of Cuba and Havana; 16 near north shore of Gulf south of New Orleans; 17 and 18 continuing on the coast, inundating the Balize, and sweeping away houses, and wasting in heavy rains inland. This did not reach the Atlantic coast, though in all respects like those that do so by the longer route west of Florida. The rate of the movement was 13 & ½ nautical miles per hour by Mr. Redfield's calculation. It was very destructive at the Rio Grande in lower Texas.

1831.—(Burton.) Cited by this author as one of the storms inundating New Orleans.

* * * * *

1835, Aug. 12 to 18.—(Redfield; Berlandier.) At Antigua &c. on 12th, 13 Porto Rico, 14 Hayti and Turk's island, 15 Matanzas and Havana, 16 Tortugas and the central districts of the Gulf towards New Orleans, 18 at Matamoras, Mexico. "It went to Galveston, but was not felt at New Orleans." This is one of the hurricanes which were exhausted in the western areas of the Gulf, and on the coast of Texas, without returning eastwardly by the higher latitudes.

* * * * *

1165 1837, Sep. 27 to Oct. 10.—(Berlandier, Lopez, Redfield.) Sep. 27 south of Jamaica; Oct. 1 at Yucatan, 2' & 3' at Matamoras, destroying the town of Brazos Santiago, and inundat-

ing the coast for many miles inland. (Berlandier.) 5th at Galveston, 6th near New Orleans, 7' at Mobile, 8th near Charleston, 9 & 10 passing E. N. E. from Charleston, southward of the usual line.

* * * * *

1842, Aug. 30 to Sep. 9.—(Redfield, Lopez.) This pursued a nearly direct line from its point of origin in long. 63 W. to the coast of Mexico at Tampico, the track lying between the 21st and 30th parallel. First observed in latitude 25' 54 long. 63 W. on Aug. 30th. Sep. 1 at Turk's island, Sep. 3 south of Nassau N. P. Sep. 4 between Key West and Havana, 5 S. W. of Tortugas, 6 south of New Orleans in lat. 25, 7 S. E. of Matamoras between Matamoras and Tampico, 9 wasting at 60 miles inland from Tampico. This inundated the coast of the lower Rio Grande. The body of the hurricane passed over the south part of the peninsula of Florida on Sep. 4th. Its track was nearly due west at a mean rate of 10½ statute miles per hour. (Redfield.) * * *

1846.—(Barton.) Cited by this author as inundating the coast near New Orleans.

* * * * *

1856, Aug. 9–12.—(Barton's New Orleans Papers &c.) This hurricane produced a fatally destructive inundation of portions of the coast south of New Orleans, last island (Island Derniere) particularly. At New Orleans 13 inches of rain fell. (Barton.)

From the New Orleans Picayune.

October 7th, 1837.

Last night was really tempestuous and dreadful; the rain continued to pour a torrent until 12 o'clock, when the wind blew from the N. W. a terrible gale. Chimney tops were blown off, awnings ripped up, and the roofs of many buildings greatly injured; and the wind whistled, howled, roared &c. * * *

Effect of the Storm.

Since writing the article on the weather, we have been informed that the damage done to property is much more general than we had supposed. The masts of several ships anchored at our wharves were swept away, and some broke from their moorings. Two steamboats were sent adrift from the other side of the river, and were much damaged. The roofs of several dwellings in the lower part of the city were carried away, being found in some instances a hundred feet from where they were placed. Fences and trees were blown down, and several of the latter were torn up by the roots. * * *

Great Destruction of Property.

Further Effects of the Storm.

Just as our paper was going to press, a gentleman informed us that the destruction of property at the railroad on Lake Pontchartrain by the storm last night has been very great. All the boats at the piers were completely wrecked, and driven into the woods, except the South Alabama.

The steamers Merchant and Mobile, the two best boats in the trade, and the Columbia and Pontchartrain are a total wreck, being so much injured as to be unfit for further use. The waves 1166 are mountain high in the lake. All the houses at the railroad were blown down, except two. The scene is one of distress and uncommon ruin. The water is three or four feet above the railroad. We are pained to hear this news, but cannot wait to give particulars.

New Orleans Picayune, Sept. 10th, 1846.

Wreck of the New York, 18 Lives Lost.

By the arrival of the steamship Galveston, Captain Wright, yesterday morning from Lavacca and Galveston, the sad intelligence was received of the total loss of the steamship New York, Captain Phillips. By this calamity no less than eighteen lives were lost. The following statement of the circumstances of this deplorable event was prepared by the clerk of the New York, and was promptly issued by us yesterday in an extra:

The steamship New York, Captain Phillips, left Galveston on Saturday September 5th at 4 p. m., and at half past 10 o'clock p. m. came to anchor about fifty miles eastward of Galveston, eleven fathoms of water; blowing very heavy from E. N. E. with a very heavy sea running eastward. At 10 a. m. on Sunday 6th the wind having lulled in a great measure, weighed anchor and proceeded on our course. At 11 a. m. finding she had no headway against the sea and wind, came to anchor in ten fathoms of water, it blowing a gale from N. E. At 12 o'clock midnight she commenced dragging her anchor; fired up strong, and commenced working the engines to keep her up to her anchor. At 2 p. m. the wind hauled to the S. W. which hove her in the trough of the sea. Slipped her cable, and set her jib, in hopes to get her before the wind; split the jib. At this time the sea struck the caboose and carried it away; sprung the boat, and caused her to leak. Let go the best bower, and paid out seventy five fathoms of chain, in hopes to bring her head to the sea; but owing to the violence of the wind, she would not come in. At 4 p. m. a heavy squall carried away the smoke pipe, fouled the promenade deck, stove in the starboard guard and wheel-house,

using the boat to leak so badly as to extinguish the fire. All hands went to bailing and working in hopes to get her free, until the wind and sea abated, which was of no avail, for at 6 o'clock p.m. she went down in ten fathoms of water.

New Orleans Picayune, Tuesday, Aug. 11th, 1856.

The Weather.

Frickleness is proverbially characteristic of meteorological phenomena; and we have just had a very palpable illustration of the fact. It was but Saturday last that we were congratulating ourselves on the moderate heat and gentle showers with which we had been favored, and on Sunday a storm commenced which continued with scarcely abated fury nearly all the day and yesterday, and promises to last for some time to come, although last evening it hauled p. For thirty hours the wind roared and howled and whistled, &c.

167 New Orleans Picayune, August 14th, 1856.

Last Island Inundated.

Shocking Loss of Life.

The rumor which prevailed yesterday of the destruction of Last Island in the late storm is probably too true. We have only some general reports of the greatness of the disaster, and a few vague particulars of the loss of individuals and families. The accounts brought from Thibodaux and Berwick's bay by the Opelousas railroad are confirmatory of the inundation of the island, the destruction of the buildings and the probable loss of a great many lives reaching perhaps to six or seven score. In the mean time the anxiety to learn the particulars is very great, and the means of communication between the city and the scene of suffering are very tight. Last Island is an island in the gulf of Mexico which has been for some years made a summer resort for planters and their families from the interior parishes of Louisiana and Attakapas, and some from this city. It is distant from the main land at the mouth of the bayou about twenty miles. The nearest land is five or six miles distant. The island is about twenty five miles in length, and from one half to three quarters of a mile wide—only three or four feet above the level of the Gulf. It is exposed to the full sweep of the waters, and the southern breezes, which have made it a desirable retreat in the summer months. * * *

The depth of the water on the island, referring as we understand to the highest point, is reported at five feet. The wreck of the steamboat Star is stated to be lying on the island near where the hotel of John Muggah formerly stood.

The rise of the inundation is said to have been of unparalleled rapidity, the height of five feet being reported to have been attained in two minutes. Although we were to read "hours" instead of "minutes," it will not be difficult to understand what a wild excitement and fearful havoc it must have caused, with no succor on hand. All the houses on the island are swept away, and it is particularly reported that most of those staying at the hotel were drowned. * * *

The Picayune of Aug. 15th, 1856 gives further particulars, and a list of the missing.

New Orleans Picayune, October 2, 1893.

Along the Coast.

The Terrible Experience of the Louisville & Nashville Train.

All Louisville & Nashville trains, passenger and freight, due in the city after ten o'clock were late from three to five hours. Passenger train No. 5, which was due at 10.25 a. m. did not get in until after one o'clock, while three freight trains, all due before ten o'clock, did not show up until after 12. Last night was a severe one on trains. From engineers and crews arriving last night at midnight it was learned that a perfect gale followed all along the line as far as Chef Menteur, twenty miles out of the city. At this place they found the gale so rough that it was impossible to proceed, the wind coming against them from right angles. Freight trains numbers 12, 15 and 2 were all blockaded at or near this point by the violence of the storm, and it was only by each assisting the other that they run into this city.

1168 Speaking of the storm, one engineer said he never experienced such a night; it was simply terrific. So great was the roar of the wild winds as they swopt over the black marshes that "when I'd give a signal for brakes, they could not hear it. You could not see your hands before you. All the rain came in torrents—not falling but blowing square in your face, and the wind simply made it impossible to walk a car. The marsh country was a jet black wilderness of howling winds. We could only make it by helping one another." This same engineer said that there was imminent danger at one time as they crept slowly through the furious gale towards the city, of the cars being blown from the tracks at points where there were sharp turns in the rails.

The Louisville & Nashville wires were not injured however by the storm. Mr. Hobbs, the Louisville & Nashville's well known train dispatcher had possession of the wires until one o'clock. From him it was learned that at Bay St. Louis there was a gale blowing, one of the fiercest known there for years. At Mississippi City also the rain and storm held high carnival.

* * * * *

Trainmen all state that the waters along the lake coast and the Gulf were lashed into a perfect overflow of water.

New Orleans Picayune, October 3, 1893.

The Whole Coast Swept by the Storm.

Sad Havoc Among the Resorts Over the Lake.

All the Way from Chef Menteur to Mobile.

The Bridges at Bay St. Louis and Biloxi Reported Damaged.

And Traffic Likely to Be Interrupted for Some Days to Come.

One of the most disastrous washouts in the history of the Louisville & Nashville railroad occurred during the terrific wind and rain on Sunday night and Monday morning. The extent of the damage can not be ascertained yet, but from the statements of trainmen it is thought that the entire roadbed between Cheateau and Mobile is in an unpassable condition. Railroad men report that the Bay St. Louis bridge is gone, and part of the Biloxi bridge has been washed away.

* * * * *

New Orleans Picayune, October 4, 1893.

Grand Isle—Bayou Cook.

The Two Settlements Swept by Wind and Waves.

And Many Lives Lost in the Terrible Calamity.

Nothing Left of Fort Livingston but the Light.

Grand Bay and Island Settlement Destroyed.

And Much Ruin Wrought to Valuable Property.

Bodies Beginning to Float in from the Wrecks.

Parties who escaped from horrible death bring the stories of many tragedies. The fearful storm which many years ago washed Grand Isle and from the face of the sea in a single night has ever been looked upon as a most terrible calamity in the history of Louisiana. The Grand Isle disaster has a parallel. Along the shores of Bayou La Chasse, Oyster bayou, Bayou Chalon, Adam's bay and Grand bay, have lived for a number of years several hundred Italian and Austrian fishermen. Of these inhabitants a very small percentage survived the terrible storm of Sunday night. It was about six o'clock in the afternoon of Sunday when the weather assumed a

threatening aspect. The wind was blowing from the southeast at a lively, but not dangerous rate, and the tide much higher than usual. Later in the night the wind shifted to the northward and began blowing very heavily. Again, about midnight, the course was changed, and in a southwesterly direction, this taken as a steady course. By this time the blast howled over the miles of marsh at the rate of a hundred miles an hour. Within an hour after the wind had taken its permanent course the tide rose five feet, covered the settlements along the shores of the bayous and bays, and was making its way rapidly towards the tracks of the New Orleans, Port Jackson and Grand Isle railroad. A locomotive and three cars were lying on the side track of the little village where the road terminates. During the night many people were carried from their demolished homes to these cars, which served as temporary shelter for fully fifty destitutes, the engineer and porter acting as Samaritans.

* * * * *

New Orleans Picayune, October 6, 1893.

The First at Cheniere.

Which Seems to Have Been Fated to Annihilation.

Two Million Dollars Worth of Property Destroyed.

Grand Isle Adding Its Hotel and Eighteen Lives.

To the Long List of Disastrous Results.

Twelve Hundred Lives Lost at Caninada.

Nine Hundred and Fifty Already Given Burial.

And Many Corpses Are Floating in Lakes and Bayous.

Death Also Visits Bayous Andre and Deford.

Captain John F. Krantz' Terrible Night on Grand Island.

He and Sixty Others Brought to the City on the Relief Boat—
Which Bore the Picayune's Reporters to the Scene of the Greatest
Disaster of the Country.

The following is a partial list of the dead, secured by canvas-
of the island by Picayune reporters.

(Here follows a partial list of the dead.)

* * * * *

Several hundred were buried unidentified, and several hundred are lost in the bay, and under the wrecked buildings. It will be some days yet before the complete list of the dead and living can be made out.

* * * * *

New Orleans Picayune, October 6, 1893.

St. Bernard's Island.

Two Thirds of the Houses Washed Away.

At 174 Marigny lives John Alphonso, who is engaged in the vegetable business. He received a letter yesterday from the firm of V. Gonzeles & Co. of St. Bernard parish, in which is contained the information that the island of St. Bernard received severe damage from the storm. Of the sixty houses on the island only nineteen are left standing; the rest were all washed from their foundations, and many of them washed away. No lives were lost however.

New Orleans Picayune, October 7, 1893.

Death Work at Biloxi &ct.

(Page 2.)

* * * * *

From Cat island the rescuing party left at four o'clock Thursday morning for the Louisiana marsh. At the mouth of Grand pass three bodies were found and buried; two of the unfortunates were recognized as Frank and Paul Guatan, known as the Rubio brothers of Biloxi. The other body was in such a condition as to be unrecognizable. The unknown dead was a man of about *fifty* years, slightly gray and partially bald, with heavy stiff mustache and side beard.

At Brush island five new graves were seen, one near Doe point, three at Caraco bay, five at Creole gap, four at Mitchell keys, one at Drydock, and five at Johnson bayou, all victims of the storm.

Leaving Grand pass the wreck of the lugger Sunnyside of New Orleans was seen. Three of the crew were drowned in Caraco bay, the captain only having been saved.

* * * * *

(Endorsed :) Document No. 36. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1171 NOTE.—There is no Document No. 37.

(Here follow 13 maps, marked pp. 1172 to 1184, endorsed as follows:)

(Endorsed.)

DOCUMENT No. 38.

Offered by State of Louisiana April 25, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 39.

Offered by State of Louisiana April 25, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 40.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 41.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 42.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 43.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 44.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 45.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 46.

Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

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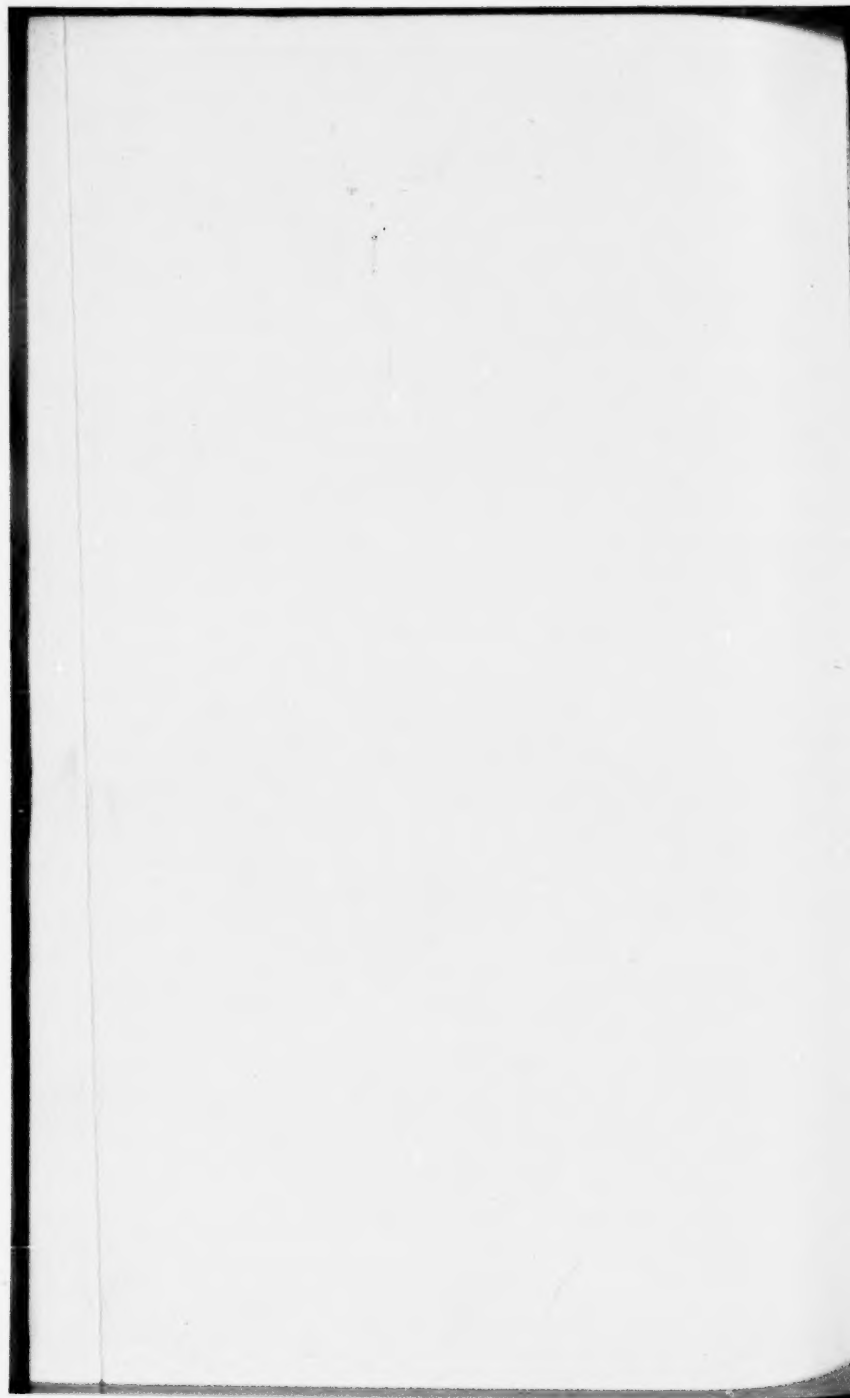
East of Missi River

Letter of 31 July 1846

S. R. 18. E.

S. R. 18. E.

FOLD OUT IS TOO LARGE TO BE FILMED



(Endorsed.)

DOCUMENT No. 47.

Offered by State of Louisiana April 26, 1904.

Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 48.

Offered by State of Louisiana April 26, 1904.

Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 49.

Offered by State of Louisiana April 26, 1904.

Frank H. Mortimer, Commissioner.

(Endorsed.)

DOCUMENT No. 50.

Offered by State of Louisiana April 26, 1904.

Frank H. Mortimer, Commissioner.

THE STATE OF LOUISIANA.

Patent (Vignette.) No. 4955.

To all to whom these presents shall come, Greeting :

Whereas, Henry J. Leovy of the parish of Orleans in the State of Louisiana, purchased per certificate No. 4287 N. S. D., Jan. 26, 1883, three islands in sections twenty, twenty one, twenty eight and twenty nine of section No. 20, 21, 28, 29 in township No. 10 S., range No. 20 E., in the S. E., E. of R., land district, containing 51 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Henry J. Leovy and to *their* heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Henry J. Leovy and to *their* heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge on the 26 day of Jan'y in the year of our Lord, one thousand eight hundred and eighty three and of the Independence of the United States the one hundred and seventh.

By the governor:

S. D. McENERY.

Record of patent vol. 22 page 75.

J. G. RICHARDSON,
Register of State Land Office.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, Jas. M. Smith, register of the State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 4955, as appearing in volume 22, folio 75, of record at this office.

Given under my hand and seal of office, this 5th day of April, A. D., 1904.

JAS. M. SMITH,
Register of the State Land Office.

(Endorsed :) Document No. 51. Offered by State of Louisiana, April 26, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKeuney, clerk.